

ORDINANCE NO. 3540

AN ORDINANCE REPEALING CHAPTER 11 OF PART V OF THE TULARE COUNTY ORDINANCE CODE, PERTAINING TO POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING OF MEDICAL MARIJUANA; ADDING NEW CHAPTER 11 OF PART V OF THE TULARE COUNTY ORDINANCE CODE, PERTAINING TO RESTRICTIONS ON CANNABIS ACTIVITIES; AND REPEALING CHAPTER 21 OF PART VI OF THE TULARE COUNTY ORDINANCE CODE, PERTAINING TO MEDICAL MARIJUANA BUSINESS LICENSE: REGULATION OF POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Part V, Chapter 11 of the Tulare County Ordinance Code is hereby repealed in its entirety.

Section 2. Part V, Chapter 11 is hereby added to the Tulare County Ordinance Code, to read as follows:

CHAPTER 11. RESTRICTIONS ON CANNABIS ACTIVITIES

ARTICLE 1. GENERAL PROVISIONS

5-11-1000 FINDINGS:

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

- (a) The County of Tulare has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and preserving the peace and integrity of neighborhoods within the unincorporated area.
- (b) Unregulated personal cultivation of cannabis and unregulated commercial cannabis activities can adversely affect the health, safety, and well-being of the County and its residents. Such adverse effects include, but are not limited to: crime or other illegal activities; negative environmental impacts; dangers posed to youth; and a negative effect on the general quality of life for areas in close proximity to where cannabis is cultivated, stored, manufactured, distributed, or sold.
- (c) Cannabis plants, whether grown indoors or outdoors, and especially as they mature prior to harvest, may produce a distinctive odor, and may be detectable far beyond property boundaries. The creation of persistent strong odors as cannabis plants mature and flower is offensive to many

people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable cannabis plants and creating an increased risk of crime.

(d) The County's geography and climate, which include dense vegetated areas that are remote and sparsely populated, as well as substantial agricultural land, provide conditions that are favorable to outdoor cannabis cultivation. Land in Tulare County costs less than in many other parts of the state, and outdoor cannabis growers can achieve a high per-plant yield because of the County's favorable growing conditions. Additionally, the County's remote rural areas and hillsides, such as in the Sierra Nevada Mountains and foothills, provide ideal locations to conceal illicit cultivation operations. These factors, coupled with known activities of certain drug cartels in the area, and continued confusion among the general populace regarding the interaction of state, federal, and local laws, make unincorporated Tulare County attractive to illegal cultivation operations.

(e) Outdoor cannabis cultivation, especially within the remote hillside areas, is creating devastating impacts to 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 cultivation operations, and corresponding increases in impacts to water supply and water quality, including the discharges into water of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste. 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.

(f) In the absence of an updated local regulatory framework, cannabis cultivators will be less likely to learn of, or implement, guidelines that are protective of the public peace, health, safety, welfare, and the environment. Until the County's local cannabis regulations are updated, negative impacts frequently associated with unregulated cannabis cultivation are expected to increase, resulting in an unregulated, unstudied, and potentially significant negative impact on the environment and upon the public peace, health, safety, and general welfare of the unincorporated areas of the County.

(g) Comprehensive civil regulation of any location used for cannabis cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation, which may be especially significant if the amount of cannabis cultivated on a single property is not regulated and significant amounts of cannabis are thereby allowed to be concentrated in one place.

(h) The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use specifically recognize that the cultivation or other concentration of marijuana in any location without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. (Cal. Dept. of Justice, Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (Aug. 2008) p. 11.)

(i) The defense to criminal prosecution provided to qualified patients and their primary caregivers under the Compassionate Use Act (Proposition 215, also referred to as the "CUA") to

cultivate cannabis plants for medicinal purposes does not confer the right to establish a land use not expressly allowed in zoning or to create or maintain a public nuisance. See *Browne v. County of Tehama*, 213 Cal. App. 4th (2013); *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013), 56 Cal. 4th 729; also see *Maral v. City of Live Oak* (2013), 221 Cal.App.4th 975. By adopting the regulations contained in this Section 15.3 and in Part V, Chapter 11 of the Tulare County Ordinance Code, the County is minimizing the risks and complaints regarding fire, odor, crime, nuisance, and pollution caused or threatened by the unregulated cannabis activities in the unincorporated area of Tulare County.

(j) Comprehensive restriction of the land and buildings used for cannabis activities, including personal cultivation, is proper and necessary to address the risks and adverse impacts identified herein. These risks are especially significant if the amount of cannabis in a single area is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place.

(k) Children are particularly vulnerable to the effects of cannabis use, and the presence of cannabis plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, churches, and other similar locations. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that children will be involved or endangered. Therefore, commercial cannabis activities, as well as the outdoor personal cultivation, in areas where children congregate adversely affects the public safety and welfare.

(l) The indoor cultivation of substantial amounts of cannabis within a residence also presents potential health, safety, and welfare risks to those living in the residence, especially to children. These risks include, but are not limited to: increased risk of fire from grow light systems that do not comply with all building codes, or from a large quantity of cannabis that is being dried or processed in the building; exposure to fertilizers, pesticides, anti-fungus/mold agents; and exposure to potential property crimes targeting the residence. As such, reasonable regulations are necessary to protect individual adult residents and children from dangers related to indoor cannabis cultivation.

(m) Significant recent changes to state cannabis laws, which (i) authorize certain personal “adult-use” cannabis activities and (ii) provide new state regulatory and licensing frameworks for commercial medicinal and adult-use cannabis activities, have not eliminated the dangers posed to the residents of Tulare County regarding cannabis. This is especially true because cannabis remains a controlled substance under federal law. The Federal Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense marijuana, or possess with intent to manufacture, distribute or dispense marijuana. This disconnect between state laws and federal law also creates a potential conflict for the County as it attempts to determine what laws and regulations would best protect the residents of the County of Tulare from the dangers of unregulated cannabis activities.

(n) Pursuant to Article XI, section 7 of the California Constitution, the County may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents. Furthermore, pursuant to Proposition 64 (also known as the “Control, Regulate, and Tax Adult-Use of Marijuana Act” or “AUMA”), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), the County has the authority to adopt and enforce local ordinances that: reasonably regulate actions and conduct related to personal cultivation of cannabis; and regulate businesses licensed under MAUCRSA,

including, but not limited to, imposing local zoning and land use requirements, and imposing and requirements related to reducing exposure to secondhand smoke.

(o) In adopting these ordinances allowing for two (2) M-licensees and setting reasonable regulations on personal cultivation, the County is attempting to balance the desires of individual qualified patients and primary caregivers, who would like reasonable access to cannabis and cannabis products, with the health, safety, and welfare concerns and risks posed by cannabis activities. In determining that two (2) M-licensees was a sufficient and appropriate number of commercial cannabis entities for the unincorporated areas, County took the following information under consideration:

1. Cannabis activities that cause large amounts of cannabis to be concentrated in a single area, such as a cannabis retail storefront or commercial cultivation site, may increase the risks of crime and public nuisances in the surrounding neighborhoods. To reduce such risks across the County, and to enable law enforcement to more closely monitor the activities around such premises, the lowest number of medicinal cannabis licensed premises should be selected.
2. For many years, Tulare County qualified patients and primary caregivers have been able to cultivate a limited amount of medicinal cannabis in their private residences in accordance with the Compassionate Use Act (Proposition 215), and other state and local laws. After November 2016, County residents were also able to cultivate a limited number of adult-use cannabis plants in accordance with Proposition 64 and the reasonable regulations on personal adult-use cultivation established by the County's Interim Ordinances Nos. 3500 and 3502. With this revision to the County's permanent cannabis ordinances, individuals will continue to be able to cultivate a limited amount of adult-use and medicinal cannabis in their Private Residences, in accordance with state and local laws. Therefore, the County does not need a substantial number of medicinal cannabis retail locations so that patients can access medicinal cannabis.
3. According to the California Department of Public Health statistics, only 383 medical marijuana identification cards total have been issued in Tulare County since 2006, and these cards must be renewed annually. As of May 2018, only 14 individuals in Tulare County have been issued medical marijuana identification cards for this calendar year. Although not all qualified patients or primary caregivers will solicit or receive a medical marijuana identification card, in addition to the criminal protections provided to cardholders, such cards also allow cardholders to avoid paying certain taxes on cannabis purchased at a commercial retail facility. Because of the low number of cardholders, even after the state and some municipalities have begun taxing cannabis transactions, the low number of cardholders suggests that only a small number of individuals in Tulare County may desire to access medicinal cannabis at a retail location.
4. For several years, two collectives have been operating in the unincorporated areas of the County, and have thereby provided medicinal cannabis access to County residents. These collectives appear to have provided a sufficient number of locations in the unincorporated areas for qualified patients or primary caregivers to access medicinal cannabis. This conclusion is further supported by the fact that County officials are not

regularly receiving feedback from citizens noting a lack of access to medicinal cannabis.

5. Additionally, the number of inquiries to County Departments with respect to obtaining a license to operate a commercial cannabis facility have decreased significantly since Proposition 64 was passed and the State developed its licensing regulations.
6. Tulare County residents also have access to commercial cannabis retail facilities in any incorporated jurisdictions within Tulare County that have determined to allow commercial cannabis, such as Woodlake or Farmersville. Thus, having a relatively small number of M-licensees in the unincorporated areas would not prevent citizens in Tulare County from accessing medicinal cannabis retail outlets.

(p) The adoption of this Ordinance is necessary and desirable to protect the public health, safety and environmental resources of the County; to ensure safe access to medicinal cannabis for qualified patients and persons with identification cards; to clarify the County's enforcement authority with respect to certain cannabis activities; and to otherwise ensure that public peace, health, safety, welfare, environmental, and nuisance factors related to the cannabis industry are adequately addressed.

(q) Business and Professions Code section 26069 provides that for the purposes of that division (relating to commercial cultivation licenses), "cannabis" is considered an "agricultural product." However, the proposed amendments to Section 15.3 of the Zoning Ordinance and Part V, Chapter 11 of the Tulare County Ordinance Code clarify that for the purposes of interpreting the County's Zoning Ordinances and other land use regulations, as well as its Right to Farm Ordinance, cannabis is differently situated than other types of agricultural products or operations. When the County enacted its land use and other regulations related to crop production and Right to Farm, it did not contemplate the possibility of cannabis as a permissible agricultural product, horticultural product, or other "agricultural operations." This is due to cannabis' federal classification as a Schedule I drug; the security concerns associated with a high value crop; and the unique characteristics of cannabis cultivation operations.

5-11-1010 PURPOSE AND INTENT:

It is the intent of this Chapter to update the Tulare County Ordinance Code to address recent changes to cannabis laws at the state level, in order to continue to promote the health, safety, and general welfare of the residents of the County of Tulare; to protect the environment; and to prevent adverse secondary effects of unregulated cannabis activities from occurring within the County of Tulare.

This Chapter is further intended to prevent community-wide adverse economic impacts, such as increased crime, decreased property values, and the deterioration of neighborhoods which could be brought about by unregulated cannabis activities, or the excessive concentration of commercial medicinal cannabis activities in specific areas, or the location of commercial cannabis activities near incompatible uses such as schools for minors, day care centers, churches that have facilities for children, and parks.

It is, therefore, the purpose of this Chapter to clarify and provide reasonable and uniform regulations regarding both medicinal and adult-use cannabis activities permitted under State law. This Section is not intended to conflict with Federal or State law. Nothing in this section is intended to authorize, legalize or license the establishment, operation or maintenance of any business, building, or use which violates any state or federal laws, regulations, or local ordinances, including County ordinances and regulations, including those relating to public nuisances or unlawful use of cannabis or marijuana. Nothing in this ordinance shall be construed to burden any defense to criminal prosecution provided by the CUA, the Medical Marijuana Program Act (“MMP”), the Medical Cannabis Regulation and Safety Act (“MCRSA”), Proposition 64, or the MAUCRSA.

5-11-1020 DEFINITIONS:

The following definitions apply to all sections or provisions in Chapter 11 of Part V of the Tulare County Ordinance Code.

“Adult-use cannabis” or **“adult-use cannabis products”** means cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

“A-license” means a state license issued under MAUCRSA for cannabis or cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician's recommendation.

“Applicant” means a person who is applying for a License.

“Cannabis,” for the purposes of this ordinance, is defined under MAUCRSA at Business and Professions Code section 26001. Cannabis is also sometimes referred to as “marijuana.”

“Cannabis products” has the same meaning as in Section 11018.1 of the Health and Safety Code.

“Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in MAUCRSA.

“Cultivate” or **“cultivation”** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Day care center” has the same meaning as in Section 1596.76 of the Health and Safety Code.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. **“Delivery”** also includes the use by a retailer of any technology platform for the commercial transfer of cannabis or cannabis products to a customer.

“Fully enclosed and secure structure” means a structure that complies with all applicable building codes; and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible only through one or more lockable doors. The walls and roof of the fully enclosed and secured structure must

be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure accessory structure to a Private Residence must be located upon the parcel on which that Private Residence is situated.

“Identification card” means a document issued by the State Department of Public Health or a County health department that identifies a person authorized to engage in the medicinal use of cannabis and the person's designated primary caregiver, if any.

“Immature Plant” or **“immature”** means a cannabis plant, whether male or female, on which buds are not readily observable by unaided visual examination.

“License” means a state license issued under MAUCRSA, and includes A-licenses, M-licenses, and Testing Laboratory licenses.

“Licensee” means any person holding a license under this division for commercial cannabis activity.

“M-license” means a state license issued under MAUCRSA for commercial cannabis activity involving medicinal cannabis.

“M-licensee” means any person holding a license under this division for commercial cannabis activity involving medicinal cannabis.

“Mature Plants” or **“mature”** means a cannabis plant, whether male or female, on which buds are readily observable by unaided visual examination.

“Medical marijuana collective” means an entity, facility or location, at a fixed, immobile location, at which two (2) or more qualified patients, persons with an identification card, and the designated primary care givers of qualified patients and persons with an identification card, combined, associate within the unincorporated area of the County of Tulare in order to jointly own and operate the business, facility or location and to collectively cultivate marijuana for medicinal purposes, as provided in Health & Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code Section 11362.81. However, after January 9, 2019, medical marijuana collectives will no longer have the criminal defenses provided by Health and Safety Code Section 11362.775, as that section will be repealed.

“Medical marijuana cooperative” means an entity at a fixed, immobile location, properly organized, registered and operated as such a corporation pursuant to Corporations Code Section 12200 *et seq.* or Food and Agricultural Code Section 54001 *et seq.*, as amended, so that qualified patients, persons with an identification card, and the designated primary caregivers of qualified patients and persons with an identification card may cultivate marijuana for medicinal purposes pursuant to Health and Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code Section 11362.81. However, after January 9, 2019, medical marijuana cooperatives will no longer have the criminal defenses provided by Health and Safety Code Section 11362.775, as that section will be repealed.

“Medicinal and Adult-Use Cannabis Regulation and Safety Act” or **“MAUCRSA”** refers to the division established by SB 94 (2017) at California Business and Professions Code section 26000 *et seq.*, to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both of the following: (1) medicinal cannabis and medicinal cannabis products for patients with valid physician's recommendations; and (2) adult-use cannabis and adult-use cannabis products for adults 21 years of age and over.

“Medicinal cannabis” or **“medicinal cannabis product”** means cannabis or a cannabis product, respectively, intended to be cultivated, processed, or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215, found at Section 11362.5 of the Health and Safety Code), by a medicinal cannabis patient in California who possesses a physician's recommendation.

“Outdoor” means any location not within a fully enclosed and secure structure.

“Owner” has the same meaning as in Section 26001 of the Business and Professions Code.

“Person” includes any individual, 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, and the plural as well as the singular.

“Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

“Personal cultivation” means possessing, planting, cultivating, harvesting, drying, or processing of living cannabis plants, or possessing the cannabis produced by such plants, in accordance with Health and Safety Code sections 11362.1(a)(3), 11362.2, and 11362.5.

“Premises” means the designated structure or structures and land specified in a person's application to a State Licensing Agency, which is owned, leased, or otherwise held under the control of the applicant or licensee, where the commercial cannabis activity will be or is conducted. The Premises shall be a contiguous area and shall only be occupied by one licensee.

“Primary caregiver” has the same meaning as in Section 11362.7 of the Health and Safety Code.

“Private Residence” means a house, apartment unit, a mobile home, or other similar dwelling, that complies with all applicable building codes. A Private Residence does not include a building owned, leased, or occupied by the County of Tulare.

“Physician's recommendation” means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

“Qualified Patient” has the same meaning as in Section 11362.7 of the Health and Safety Code.

“School” means institutions of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school,

kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

“Smoke” also means the particles emitted into the air from any lighted or heated device or pipe, or any other lighted or heated cannabis or cannabis product intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoke” includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.

“State Licensing Authority” means the State of California’s agency responsible for the issuance, renewal, or reinstatement of a license, or the state agency authorized to take disciplinary action against the commercial cannabis licensee.

“Testing Laboratory” means a laboratory, facility or entity in the state that offers or performs tests of cannabis or cannabis products.

5-11-1030 NON-EXCLUSIVE LAWS AND REMEDIES:

This Chapter is cumulative to all other laws, rules, regulations, and remedies now or hereafter available pertaining to cannabis, including any laws related to the regulation or abatement of public nuisances.

5-11-1040 RECOVERY OF COSTS; ENFORCEMENT:

(a) The Board of Supervisors of the County of Tulare may set fees from time to time as necessary to recover the County’s costs for processing violations of this Chapter, including administrative, investigative and code enforcement costs.

(b) The Board of Supervisors of the County of Tulare may collect any nuisance abatement costs by special assessment or lien, as provided for in Chapter 1 of Part IV of the Tulare County Ordinance Code, and Government Code section 25845.

(c) All other procedures, including the establishment of a hearing officer and procedures for the hearings and other administrative steps herein, may be established by ordinance or resolution of the Board of Supervisors of the County of Tulare, in accordance with all applicable laws.

(d) The remedies in this section is cumulative and does not preclude other remedies under the Tulare County Ordinance Code or other state, federal and local laws. Nothing herein shall preclude the County from seeking other legal or equitable remedies available to it by law.

5-11-1050 NO DUTY TO ENFORCE:

Nothing in this Chapter shall be construed as imposing any duty on the Sheriff, the Tulare County Resource Management Agency (“RMA”), the Tulare County Agricultural Commissioner, the Tulare County Health and Human Services Agency, or any other Department of the County of Tulare to take any specific enforcement action with respect to alleged violations of this Chapter, including issuing citations or notices of violations pursuant to this Chapter. Neither the Sheriff, RMA, the Tulare County Agricultural Commissioner, the Tulare County Health and Human Services Agency, or any other Department of the County of Tulare, or the County of Tulare, shall

be held liable for failure to take any specific enforcement action to correct an alleged violation of this Chapter.

5-11-1060 NO VESTED OR NON-CONFORMING RIGHTS:

Neither this Chapter nor any other provision of this Code, or action, failure to act, letter, statement, or any other representation issued by the County or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any cannabis activities.

5-11-1070 CANNABIS NOT INTERPRETED TO BE AN AGRICULTURAL PRODUCT

Notwithstanding any interpretation of “agricultural product” outlined in Business and Professions Code section 26069, for the purposes of the Tulare County Zoning Ordinance and other Tulare County land use regulations, including the Tulare County “Right to Farm” Ordinance (Part VII, Chapter 29 of the Tulare County Ordinance Code), cannabis shall not be considered an agricultural product, horticultural product, or part of “agricultural operations”. Furthermore, cannabis shall not be cultivated except in accordance with this Section 15.3 and Part V, Chapter 11 of the Tulare County Ordinance Code.

5-11-1080 SEVERABILITY; SEPARATE AND DISTINCT PROVISIONS:

The provisions of this Chapter are hereby declared to be severable. If any section, subsection, subdivision, sentence, clause, phrase, portion, or application of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have enacted this Chapter, each section, subsection, subdivision, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions be declared invalid.

Article2. RESTRICTIONS ON PERSONAL AND COMMERCIAL CANNABIS ACTIVITIES

5-11-2000 NON-COMMERCIAL CULTIVATION REQUIREMENTS:

(a) Personal cultivation of cannabis is prohibited, except when such cultivation conforms to the following minimum standards, and any additional requirements imposed by Section 15.3 of Ordinance No. 352, the Tulare County Zoning Ordinance:

1. The cultivation of cannabis shall only be conducted indoors, within a Private Residence, or within a fully enclosed and secure structure on the grounds of the Private Residence.
2. A fully enclosed and secure structure used for the cultivation of cannabis that is an accessory structure on the grounds of the Private Residence shall be located in the rear yard area of the parcel. This requirement that cultivation occur only in the rear yard shall not apply to cultivation occurring in a garage.

3. The Private Residence or fully enclosed and secure structure where cultivation occurs shall be designed to restrict smells, odors, or smoke related to cannabis cultivation or consumption from being transmitted to an adjoining property or public areas.
4. From a public right-of-way, there shall be no exterior evidence of Cannabis cultivation or related processing activities occurring on the parcel.
5. Indoor grow lights shall comply with the California Building, Electrical, Mechanical, and Fire Codes as adopted by the County.
6. The individual engaged in cultivation activities (1) shall not engage in unlawful or unpermitted surface drawing of water for such cultivation, and (2) shall not illegally discharge water from the location where cultivation occurs.
7. Adequate mechanical locking systems (including deadbolts) to prevent unauthorized entry must be installed as part of the fully enclosed and secure structure where cannabis is cultivated prior to the commencement of cultivation.
8. Windows and roof hatches of the portion of the Private Residence or fully enclosed and secure structure must be secured with bars on the windows so as to prevent unauthorized entry, but must also be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency.
9. Except where cultivating for a Qualified Patient under 21 years of age pursuant to the Compassionate Use Act (Proposition 215), the cannabis cultivation area, whether in a Private Residence or a fully enclosed and secure structure located on the grounds of a Private Residence, shall be secured from access by persons under 21 years of age.
10. All cannabis cultivation must be performed by the legal owner of the Private Residence where the cultivation is to be conducted, or a legal resident thereof. If the person cultivating the marijuana is not the legal owner of the Private Residence, the individual wishing to cultivate must obtain and keep a written and notarized consent form from the property owner before commencing any cultivation activities. The written and notarized consent form shall be kept at the location where cultivation occurs, and available for inspection by County officials, including the Sheriff, or his/her designee, and any County Code inspectors. If ownership of the Private Residence changes, the individual cultivating cannabis in the Private Residence or accessory structure must obtain, within 30 days of the change of ownership, a new notarized consent form from the new owner.
11. A portable fire extinguisher that complies with the regulations and standards adopted by the state fire marshal and applicable law shall be kept in the fully enclosed and secure structure used for cultivation of cannabis. If cultivation occurs in a Private Residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.
12. All indoor cultivation of cannabis and the structures in which the cultivation occurs must be in compliance with this Ordinance Code, any other applicable state or local law, ordinance or regulation, including any and all building, fire, electrical, mechanical, and plumbing codes adopted by the County of Tulare.

13. Cultivation of adult-use cannabis shall be limited to six (6) cannabis plants per Private Residence, regardless of whether the cannabis plants are cultivated inside the Private Residence, in a fully enclosed and secure structure that is an accessory structure located upon the grounds of a Private Residence, or some combination thereof. The limit of six (6) adult-use cannabis plants per Private Residence shall apply regardless of how many individuals reside at the Private Residence.

14. Cultivation of medicinal cannabis shall be limited to six (6) mature or twelve (12) immature cannabis plants per qualified patient and/or person with an identification card, regardless of whether the cannabis plants are cultivated inside the Private Residence, in a fully enclosed and secure structure that is an accessory structure located upon the grounds of a Private Residence, or some combination thereof. With respect to cultivation activities by primary caregivers, cultivation of medicinal cannabis shall be limited to six (6) mature or twelve (12) immature cannabis plants per qualified patient or person with an identification card. However, there shall be a maximum of twenty-four (24) cannabis cultivated plants in a Private Residence, regardless of the number of individuals residing at the Private Residence, and regardless of the purpose for which the cannabis is cultivated, except if such Private Residence is located in an area zoned for commercial cannabis activities.

(b) Any personal cannabis cultivation that does not comply with this subsection is unlawful and is hereby declared to be a public nuisance.

5-11-2010 COMMERCIAL CANNABIS ACTIVITY; RESTRICTIONS:

(a) Commercial cannabis activities are prohibited in the unincorporated areas, except those that comply with the following requirements

1. Except as provided for in Section 5-11-2010(c) below, are commercial cannabis activities conducted by M-licensees in accordance with State law, with a Premises located in the unincorporated areas of Tulare County.

2. M-Licensees are prohibited from holding more than one of each of the following types of Licenses for Premises located in the unincorporated areas of Tulare County:

- i. Type 1A (Cultivation; Specialty indoor; Small);
- ii. Type 4 (Cultivation; Nursery);
- iii. "Processor" (Cultivation);
- iv. Type 10 (Retailer)

3. M-licensees are prohibited from cultivating more than ninety-nine (99) cannabis plants, whether mature or immature, on the Premises of the M-licensee.

4. Except as otherwise required by law, M-licensees with Premises in the unincorporated areas of Tulare County are prohibited from making deliveries of cannabis or cannabis products. Nothing herein shall be deemed to prohibit deliveries originating from M-Licensees with Premises located outside of the unincorporated areas of Tulare County.

5. Commercial cannabis activities must occur exclusively within a fully enclosed and secure structure, that also meets the following requirements:

- i. The exterior appearance of the structure where commercial cannabis activities are conducted is compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area.
- ii. The structure where commercial cannabis activities are conducted must be secured from public access, and must comply with the requirements for locks and alarm systems, as required in California Code of Regulations, Title 16, sections 5046 and 5047.
- iii. Interior building lighting, exterior building lighting, and parking area lighting will be of sufficient foot-candles and color rendition so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty feet.
- iv. Windows and roof hatches of the structure must be secured with bars on the windows so as to prevent unauthorized entry, but must also be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency.
- v. Cannabis, cannabis products, and commercial cannabis activities must not be visible from the building exterior.
- vi. The structure shall be designed to restrict smells, odors, or smoke related to cannabis cultivation, production, sales, or consumption from being transmitted to an adjoining property or public areas.

6. For cultivation activities, the M-licensee must comply with the following: (1) does not engage in unlawful or unpermitted drawing of surface water for such cultivation, (2) does not permit illegal discharges of water or wastewater from the Premises.

7. Commercial cannabis activities must comply with all requirements set forth in state or local laws, ordinances, and regulations, including, but not limited to:

- i. All requirements and limitations in Ordinance No. 352, the Zoning Ordinance of Tulare County, including, but not necessarily limited to, Section 15.3; and
- ii. Any and all building, fire, electrical, mechanical, and plumbing codes adopted by the County of Tulare.

(b) State Licenses:

1. The County does not issue licenses or permits to conduct commercial cannabis activities; however, no more than two (2) M-licensees (whether temporary or permanent) shall operate at any time in the unincorporated areas of the County of Tulare, each at a single discrete Premises which meets the requirements of this Chapter and of Ordinance 352, the Zoning Ordinance of Tulare County. Subject to the limitations outlined in Section 5-11-2010, subdivision (b)(2), below, whether a person is one of the two Licensees

authorized by the State to operate in Tulare County shall be determined by the date a License for a Premises in the unincorporated areas is issued by the State, with first in time having priority.

2. However, medical marijuana collectives or medical marijuana cooperatives that have continuously operated in substantial compliance with all state and local laws, ordinances, and regulations (including the Compassionate Use Act of 1996 and its implementing laws) since before September 1, 2016 may be identified to the state for priority for obtaining state M-licenses to operate in Tulare County in accordance with Business and Professions Code section 26054.2. In order for the County to identify such prospective applicants, applicants must provide, within 90 days, and to the satisfaction of the Resource Management Agency Director or designee, all information necessary to confirm the location, nature, and longevity of a prospective applicants' operations, including, but not limited to: articles of incorporation or minutes of activities; lists of qualified patients, persons with identification cards, or primary caregivers participating with the collective or cooperative; participant physician recommendations; sketches or diagrams of the property with location of buildings on the property; statements attesting to the number of plants cultivated by the collective or cooperative; and any building or other permits obtained for the locations and activities at issue.

(c) Entities that claim to have been continuously operating as a medical marijuana collective or medical marijuana cooperative, in substantial compliance with all state and local laws, ordinances, and regulations since before the effective date of this ordinance must provide the information required in Section 5-11-2010, subdivision (d) and satisfy all application requirements of the State of California and its applicable State Licensing Agencies within 120 days of the effective date of this ordinance, to avoid potential code enforcement for operating without an M-license.

(d) Within 30 days of the effective date of this ordinance, or in advance of beginning commercial cannabis activities in the County, whichever occurs last, persons conducting commercial cannabis activities must provide the following information to Sheriff, or designee, or the Resource Management Agency (RMA) Director, or designee:

1. Name and contact information and name of agent for service of process (if different) of person/entity conducting commercial cannabis activities.
2. Address and map of Premises where commercial cannabis activities will be conducted.
3. Names of all Owners of the person/entity conducting commercial cannabis activities.
4. Once available, a copy of a state issued M-license for the appropriate type of activity.
5. If the person conducting commercial cannabis activities does not own the Premises and the parcel upon which the Premises are situated, a notarized consent form from the legal owners of the Premises and/or parcel.

Whenever there is a change in any of the information specified in this subparagraph (d) of Section 5-11-2010, the persons conducting the commercial cannabis activities must provide updated information to the Sheriff, or designee, or RMA Director, or designee, within seven (7) calendar days. Failure to provide such information or to provide updated information is a violation of this ordinance, which the County will report to the State Licensing Agencies.

(e) The County prohibits onsite cannabis sales to, or consumption by, persons 21 years of age or older at a county fair or district agricultural association event.

(f) Nothing in this ordinance should be construed to provide any right or entitlement to an M-license applicant or an M-licensee.

5-11-2020 PUBLIC NUISANCE:

Any violation of Article 2 of Chapter 11 of Part V of this Ordinance Code is hereby declared to be a public nuisance, and is subject to abatement as provided in Chapter 1 of Part IV of this Ordinance Code.

5-11-2030 VIOLATIONS:

Any violation of the provisions of Article 2 of Chapter 11 of Part V shall be a misdemeanor and shall be punishable as provided in section 125 of this Ordinance Code. Notwithstanding the foregoing, nothing in this Section shall be construed to criminalize an activity protected from arrest or prosecution under the Compassionate Use Act, the MMP, Proposition 64, or the MAUCRSA.

Section 3. Part VI, Chapter 21 of the Tulare County Ordinance Code is hereby repealed in its entirety.

Section 4. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the Visalia Times Delta, a newspaper printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 14th day of August, 2018, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: Supervisors Crocker, Vander Poel, Shuklian, Worthley, and Ennis

NOES: None

ABSTAIN: None

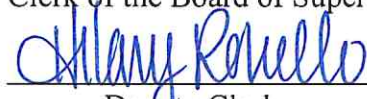
ABSENT: None

COUNTY OF TULARE

By: 
Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/
Clerk of the Board of Supervisors

By:


Deputy Clerk



Approved as to Form:
County Counsel

By


Deputy

Matter # 20151225