

ORDINANCE NO. 2018-18

(Cannabis Regulation)

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code).

SECTION 1. Summary. This ordinance establishes regulations to govern the establishment of businesses engaged in one or more commercial cannabis activities. This ordinance allows commercial cannabis activities in certain zoning districts under a land use permit. This ordinance also prohibits commercial cannabis activities within certain areas of unincorporated Contra Costa County. This ordinance will become operative on the effective date of the Contra Costa County Cannabis Business Tax Ordinance only if the tax ordinance is approved by a majority of voters voting on the tax ordinance at the November 6, 2018, general election.

SECTION 2. Findings. The Board of Supervisors finds as follows:

- (a) In 1996, California voters approved Proposition 215, the Compassionate Use Act. The purpose of the Compassionate Use Act is to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited circumstances. The Compassionate Use Act (Health and Safety Code (“HSC”) § 11362.5) established a limited defense for qualified patients and their primary caregivers to the crimes of possessing or cultivating marijuana.
- (b) In 2003, the Legislature enacted the Medical Marijuana Program. The Medical Marijuana Program (HSC §§ 11362.7-11362.83) established regulations and procedures regarding the issuance of identification cards to patients qualified to use medical marijuana, and clarifies what is a “reasonable” amount of marijuana for personal medical use. The Medical Marijuana Program also established a defense to criminal liability for the collective or cooperative cultivation of marijuana. (HSC § 11362.775.) Medical marijuana dispensaries began opening throughout the state as medical marijuana collectives under the Compassionate Use Act and the Medical Marijuana Program.
- (c) In 2008, the Board of Supervisors adopted Ordinance No. 2008-05 to prohibit the establishment of medical marijuana dispensaries in the unincorporated area of Contra Costa County.
- (d) The federal Controlled Substances Act (Title 21, United States Code § 801 et seq.) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.

- (e) The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that neither the Compassionate Use Act nor the Medical Marijuana Program expressly or impliedly preempt the authority of California counties and cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. Similarly, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that nothing in the Compassionate Use Act nor the Medical Marijuana Program preempts California counties and cities from exercising their police powers to prohibit the cultivation and sale of marijuana within their jurisdictions.
- (f) The Medical Marijuana Regulation and Safety Act, later renamed the Medical Cannabis Regulation and Safety Act, was signed by the Governor on October 9, 2015. The purpose of the act was to regulate the cultivation, dispensing, manufacturing, distribution, and transportation of medical marijuana. The act affirmed the authority of counties and cities to regulate commercial medical marijuana activities through the adoption of land use ordinances.
- (g) On November 8, 2016, the voters of the State of California adopted Proposition 64, which enacted the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). AUMA took effect November 9, 2016. AUMA makes it legal under California law for anyone 21 years of age or older to possess, plant, cultivate, harvest, dry, and process up to six marijuana plants per private residence for personal use (the “Personal Use Grows”), subject to certain restrictions. (HSC, §§ 11362.2 & 11362.3.) AUMA also makes it legal under California law for anyone 21 years of age or older to do all of the following:
 - (1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;
 - (2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;
 - (3) Smoke, except where smoking is prohibited, and ingest marijuana and marijuana products; and
 - (4) Possess, transport, purchase, obtain, use, manufacture or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever. (HSC, § 11362.1.)
- (h) Under state law, living plants of Personal Use Grows, and marijuana from those plants in excess of 28.5 grams, must be kept in a locked space, enclosed, and must not be visible by normal unaided vision from a public place. (HSC, § 11362.2(a).) Cities and counties also may enact and enforce reasonable regulations to regulate Personal Use Grows, and

they may prohibit Personal Use Grows outdoors. (HSC, § 11362.2(a)(1), (b)(1) & (b)(3).)

- (i) On June 27, 2017, the Governor signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which went into effect immediately. MAUCRSA combined the state’s medical cannabis regulations with the adult-use cannabis rules in AUMA. Under MAUCRSA, state commercial cannabis licenses will be available January 1, 2018, for various activities, including cultivation, manufacturing, testing, retailing, distributing, and microbusiness, as long as the activities are allowed in the local jurisdiction where the activity would be located. Applicants for state cannabis licenses may apply for medical or adult-use licenses in any category.
- (j) Under MAUCRSA, cities and counties retain local authority to license, regulate, limit, or completely ban marijuana businesses within their jurisdictions. (BPC, § 26200.) A state license will not be issued to a business if the business cannot lawfully be established in the city or county in which it intends to locate. (BPC, § 26055(d).)
- (k) Pursuant to Article XI, section 7 of the California Constitution, Contra Costa 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 citizens.

SECTION 3. Chapter 88-28 (Cannabis Regulation) of the Contra Costa County Ordinance Code, enacted by the adoption of Ordinance No. 2017-26 on October 24, 2017, is hereby repealed and replaced with new Chapter 88-28 (Cannabis Regulation) to read as follows:

Chapter 88-28

CANNABIS REGULATION

Article 88-28.2 General

88-28.202 Purpose. The purpose of this chapter is to regulate the personal cultivation of cannabis, and the commercial cultivation, distribution, transportation, storage, manufacturing, processing, and sale of medical cannabis and medical cannabis products, and of adult-use cannabis and adult-use cannabis products, as authorized by the Control, Regulate, and Tax Adult Use of Marijuana Act, and by the Medicinal and Adult Use Cannabis Regulation and Safety Act. The requirements of this chapter are in addition to all other applicable requirements of this code and all applicable State laws and regulations. The requirements of this chapter apply to commercial cannabis activities, regardless of whether the activity is authorized under a state A-license or a state M-license. (Ord. 2018- __, § 3.)

88-28.204 Prohibited activities.

- (a) Commercial cannabis activities not expressly authorized by this chapter are prohibited in all zoning districts.

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- (b) Temporary commercial cannabis events are prohibited in all zoning districts.

(Ord. 2018- __, § 3.)

88-28.206 Definitions.

- (a) Except as otherwise provided in subdivision (b), the definitions set forth in Division 10 of the Business and Professions Code, and the definitions set forth in Health and Safety Code section 11362.7, apply to this chapter.
- (b) The following terms have the following meanings for purposes of this chapter:
 - (1) “Bureau” has the meaning set forth in Business and Professions Code section 26001(e).
 - (2) “Business” means a business engaged in one or more commercial cannabis activities under a State license and a permit issued under this chapter.
 - (3) “Commercial cannabis activity” means any of the following: the retail sale of cannabis or cannabis products under Section 88-28.412 of this chapter; the commercial cultivation of cannabis under Section 88-28.414 of this chapter; the manufacturing of cannabis or cannabis products under Section 88-28.416 of this chapter; cannabis testing under Section 88-28.418 of this chapter; and the distribution of cannabis or cannabis products under Section 88-28.420 of this chapter.
 - (4) “Deliver” or “delivery” means the commercial transfer of cannabis or cannabis products from a retailer to a customer.
 - (5) “Delivery retailer” means a retailer that conducts retail sales of cannabis or cannabis products exclusively through deliveries.
 - (6) “Department” means the Department of Conservation and Development.
 - (7) “Director” means the Director of Conservation and Development, or designee.
 - (8) “Indoor commercial cultivation” includes both “indoor cultivation” and “mixed-light cultivation,” as defined in Title 3, California Code of Regulations, section 8000. Indoor commercial cultivation includes, but is not limited to, commercial cultivation of cannabis within a building, structure, greenhouse, or hoop house.
 - (9) “Outdoor commercial cultivation” means commercial cultivation of cannabis that meets both of the following criteria:

- (A) The cannabis is cultivated without the use of any light deprivation, any artificial lighting, or any supplemental low-intensity lighting.
 - (B) The cannabis is cultivated outdoors, and it is not cultivated within a building, structure, greenhouse, or hoop house.
- (10) “Retailer” means a State-licensed retailer of cannabis or cannabis products. A retailer may be a delivery retailer or a storefront retailer.
 - (11) “Retail water supplier” means a public agency, city, county, or investor-owned water utility regulated by the state Public Utilities Commission, that provides retail water service. A retail water supplier does not include a mutual water company.
 - (12) “State license” or “license” means a license issued pursuant to Division 10 of the Business and Professions Code, sections 26000 through 26231.2. A state license may be a state A-license or a state M-license.
 - (13) “Storefront retailer” means a retailer that conducts retail sales of cannabis or cannabis products in whole or in part at a facility that is open to the public.
 - (14) “Temporary commercial cannabis events” means those activities described in and covered by Business and Professions Code section 26200(f), and Sections 5600 through 5603 of Title 16 of the California Code of Regulations.
 - (15) “Vertically-integrated business” means a business that includes two or more of the following commercial cannabis activities: the retail sale of cannabis and cannabis products under Section 88-28.412 of this chapter; the commercial cultivation of cannabis under Section 88-28.414 of this chapter; the manufacturing of cannabis or cannabis products under Section 88-28.416 of this chapter; and the distribution of cannabis or cannabis products under Section 88-28.420 of this chapter.
 - (16) “Volatile solvent” means any solvent that is or produces a flammable gas or vapor that, when present in sufficient quantities, will create explosive or ignitable mixtures, including but not limited to butane, hexane, and propane.

(Ord. 2018- __, § 3.)

Article 88-28.4 Permit Requirements

88-28.402 Land use permit required.

- (a) Permit required. Except as provided in section 88-28.404, a land use permit is required for all commercial cannabis activities in the unincorporated areas of the County.

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- (b) Permit term. A permit issued under this chapter shall have an initial term of five years. A permit may be renewed for additional five-year terms, one additional term at a time, as set forth in Section 88-28.424.
- (c) Limits on storefront retailer, commercial cultivation, and cannabis manufacturing permits.
 - (1) No more than four (4) permits for storefront retailers under Section 88-28.412 will be in effect at any one time.
 - (2) No more than ten (10) permits for commercial cultivation under Section 88-28.414 will be in effect at any one time.
 - (3) No more than two (2) permits for cannabis manufacturing within an agricultural zoning district under Section 88-28.416 will be in effect at any one time. The permit limit in this Section 88-28.402(c)(3) does not apply to either of the following:
 - (A) Cannabis manufacturing within a zoning district that is not an agricultural zoning district.
 - (B) A vertically-integrated business in an agricultural zoning district that includes both cannabis cultivation and cannabis manufacturing.
 - (4) A permit issued for a vertically-integrated business that authorizes both (A) a retailer under Section 88-28.412, and (B) commercial cultivation under Section 88-38.414, does not count toward the commercial cultivation 10-permit limit in subsection (c)(2). Except as specifically provided in the preceding sentence or elsewhere in this Section 88-28.402(c), a permit issued for a vertically-integrated business counts toward the permit limit for each commercial cannabis activity involved in the vertically-integrated business.

(Ord. 2018- __, § 3.)

88-28.404 Selection process for specified commercial cannabis activities.

- (a) Solicitation. An application for a commercial cannabis activity that is subject to a permit limit in Section 88-28.402(c) may be submitted only after the conclusion of a solicitation process conducted in accordance with this section. In advance of a solicitation, the Board of Supervisors will approve the solicitation and adopt forms and procedures necessary to implement the solicitation process, including the form of a request for proposals. The solicitation process approved by the Board of Supervisors will be administered by the Director. An application to renew a permit issued under this chapter is not subject to the requirements of this section.

- (b) Notification lists. Notification lists may be established to maintain lists of persons that have expressed an interest in obtaining a permit for a commercial cannabis activity that is subject to a permit limit in Section 88-28.402(c). Notification lists are to assist the County in providing notice of solicitations to interested persons. A person's inclusion on a notification list confers no priority or advantage with respect to any solicitation under this section. A person's inclusion on a notification list does not guarantee the person will receive notice about any solicitation.
- (c) Issuance of request for proposals. After the Board of Supervisors approves a solicitation for a commercial cannabis activity that is subject to a permit limit in Section 88-28.402(c), the Director will issue a request for proposals on a form approved by the Board. Persons on an applicable notification list may be notified of the availability of the request for proposals. Notice of the availability of the request for proposals also may be provided to other persons, or in any other manner, as determined by the Board of Supervisors.
- (d) Proposal submission deadline. All proposals must be submitted by the proposal submission deadline specified in the request for proposals.
- (e) Evaluation of proposals. All proposals timely submitted in response to a request for proposals will be evaluated by a panel using scoring criteria specified in the request for proposals. All proposals will be ranked according to the scores determined by the panel.
- (f) Invitation to apply for a permit. Following the evaluation of proposals, the persons who submit the highest scoring proposals will be provided written notice that they may apply for a permit under this chapter. The notice will specify the application deadline. The number of persons receiving notice will not exceed the number of permits available for the applicable commercial cannabis activity. If the Department does not receive a timely submitted application from a person invited to apply for a permit, the person who submitted the proposal with the next highest score may be invited to apply for a permit. If a request for proposals specifies a minimum score needed to be eligible to be invited to apply for a permit, persons who receive scores below the minimum score will not be invited to apply for a permit.

(Ordinance 2018-___, § 3.)

88-28.406 Exemptions from permitting requirements.

- (a) Personal cultivation.
 - (1) A permit under this chapter is not required for a person 21 years of age or older to cultivate six (6) or fewer cannabis plants at a private residence, or inside a fully-enclosed and secured accessory structure to a private residence located on the grounds of the private residence, if all of the following conditions are met.

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- (A) The private residence or accessory structure, and all lighting, plumbing, and electrical components used for cultivation, must comply with all applicable zoning, building, electrical, and plumbing codes and permitting requirements.
- (B) All living cannabis plants cultivated indoors, and all cannabis in excess of twenty-eight and one-half grams produced by cannabis plants cultivated on the grounds of a private residence, must be kept in a locked room and may not be visible from an adjacent property, right-of-way, street, sidewalk, or other place accessible to the public.
- (C) The private residence must be lawfully occupied by the person 21 years of age or older who cultivates the cannabis plants within the private residence or within the accessory structure. If the private residence is not owner-occupied, written permission from the owner of the private residence must be obtained before cannabis plants may be cultivated.
- (D) Notwithstanding anything to the contrary, up to three (3) of the cannabis plants cultivated under this subsection (a)(1) may be cultivated outdoors on the grounds of a private residence, if all of the following conditions are met.
 - (i) The edge of each cannabis plant canopy must be at least 10 feet away from property lines of the lot on which the private residence is located.
 - (ii) No cannabis plant may exceed a height of five (5) feet above ground level.
 - (iii) No cannabis plant may be visible from a right-of-way, street, sidewalk, or other place accessible to the public.
 - (iv) All cannabis plants cultivated outdoors must be enclosed by fencing, and all gates and other points of entry to the outdoor growing area must be locked at all times.
- (2) Personal cultivation by qualified patients and primary caregivers is subject to the restrictions set forth in Business and Professions Code section 26033 and Health and Safety Code section 11362.77, and the requirements of subsection (a)(1).
- (b) Deliveries originating outside of the unincorporated County.
 - (1) A licensed and permitted commercial cannabis delivery business located outside of the County may travel on public roads within the County for the purpose of

delivering cannabis or cannabis products to persons in jurisdictions other than the County, where the delivery of cannabis and cannabis products is authorized.

- (2) A licensed and permitted commercial cannabis delivery business located outside of the County may deliver cannabis or cannabis products to persons in unincorporated Contra Costa County, as long as all of the following requirements are met.
 - (A) The business possesses a County business license.
 - (B) The business shall ensure that the employees, upon request, provide the following documentation to law enforcement officers and to employees of State and local agencies enforcing this chapter and the requirements of State laws and regulations:
 - (i) A copy of the business' current permits, licenses, and entitlements authorizing the business and deliveries.
 - (ii) The employee's valid government-issued identification.
 - (iii) A copy of each delivery request.
 - (iv) Chain of custody records for all cannabis or cannabis products being delivered.
 - (C) All vehicles used to deliver cannabis and cannabis products must be owned by the business. The business shall ensure that its drivers do not deliver cannabis or cannabis products on the business' behalf using any vehicles other than vehicles provided by the business.
 - (D) All drivers who deliver cannabis and cannabis products on behalf of the business must be employed by the business. The business may not utilize independent contractors to deliver cannabis or cannabis products. The business shall ensure that each of its drivers possesses a valid State driver's license.
 - (E) The business shall ensure that its employees who deliver cannabis or cannabis products require customers to show State-issued identification at the time a delivery is made. The business shall ensure that its employees deliver cannabis and cannabis products only (i) to persons who are 21 years of age or older, or (ii) to persons who are 18 years of age or older and either possess a physician's recommendation, or are primary caregivers.

(Ord. 2018- __, § 3.)

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88-28.408 Permit application requirements.

- (a) Requirements for all applications. Each person applying for a permit authorizing commercial cannabis activities under this chapter shall include the following information in the permit application:
 - (1) The type of State license that the applicant will obtain.
 - (2) Proof of ownership of the property where the business will be located. If the applicant is not the owner of the property where the business will be located, a notarized, written authorization from each owner of the property that is the subject of the application consenting to the application and the operation of the proposed commercial cannabis activity on the subject property. In the authorization, each owner shall expressly agree that it will evict a person who violates the requirements of this chapter or a permit issued under this chapter.
 - (3) The address and assessor's parcel number of the property or properties where the business will be located.
 - (4) The name and address of each person or entity responsible for the operation of the commercial cannabis activity, which includes but may not be limited to each manager, each corporate officer, each individual with an ownership interest, each member of a board of directors, each general or limited partner, and each member of a decision-making body for the commercial cannabis activity.
 - (5) Site plans, floor plans, conceptual improvement plans, and a general description of the nature, size, and type of commercial cannabis activities being proposed.
 - (6) An operating plan that includes all of the following information:
 - (A) A standard operating procedures manual detailing how operations will comply with State and local regulations; how safety and quality of products will be ensured; record keeping procedures for financing, testing, and other items records required to be kept by State law; and product recall procedures.
 - (B) Proposed hours of operation.
 - (C) Waste disposal information.

- (D) Medical recommendation verification procedures, if applicable, and youth access restriction procedures.
 - (E) A record keeping policy that ensures records will be kept in accordance with State laws and regulations.
 - (F) A description of track and trace measures that will be implemented.
 - (G) Sustainability measures that will be utilized at the business, including water efficiency measures, energy generation and efficiency measures, high efficiency mechanical systems, and alternative fuel transportation methods.
 - (H) An odor control plan that describes how the business will prevent odors from impacting neighboring parcels or creating a public nuisance.
 - (I) Size, height, colors, and design of any proposed signage at the business.
 - (J) A parking plan that establishes how all off-street parking requirements will be met.
 - (K) A security plan that establishes how all security requirements in State laws and regulations will be satisfied.
 - (L) Details regarding how cannabis and cannabis products will be received, stored, handled, transported, and secured to prevent theft and trespass.
- (7) Information describing how any conditions specified in a request for proposals will be satisfied.
- (b) Retailer applications. In addition to the information required in subsection (a), an application for a retailer permit must include in its operating plan information describing how the requirements in Section 88-28.412 will be satisfied.
- (c) Commercial cultivation applications. In addition to the information required in subsection (a), an application for a commercial cultivation permit must include in its operating plan information describing how the requirements in Section 88-28.414 will be satisfied, and the following additional information:
- (1) A floor plan or site plan identifying the location, dimensions, and boundaries of all proposed canopy areas, taking into account space needed for ongoing care of plants, and a description of the proposed method of physically delineating those boundaries at the site.

- (2) If the business will satisfy its water demand in whole or in part by water service from a retail water supplier, the application must include proof of water service availability from the retail water supplier.
- (d) Cannabis manufacturing applications. In addition to the information required in subsection (a), an application for a cannabis manufacturing permit must include in its operating plan information describing how the requirements in Section 88-28.416 will be satisfied, and the following additional information:
 - (1) Information on products used in the manufacturing process, including the liquids, solvents, and agents, used in the manufacturing process.
 - (2) Identification of each solvent used in the manufacturing process, the quantities of solvents used, and the maximum quantities of solvents that will be stored onsite.
 - (3) Protocol for storing products used in the manufacturing process and a hazard response plan.
 - (4) Manufacturing quality control measures.
- (e) Cannabis testing laboratory applications. In addition to the information required in subsection (a), an application for a testing laboratory permit must include in its operating plan information describing how the requirements in Section 88-28.418 will be satisfied, and the following additional information:
 - (1) Details about how cannabis will be received, secured, tested, and destroyed upon completion of testing, all in accordance with State laws and regulations.
 - (2) A copy of a certificate of ISO/IEC 17025 accreditation from an accreditation body. If a certificate is not available at the time of application or before a permit is issued, providing a copy of the certificate to the Department will be required as a condition of operating the testing laboratory.
 - (3) Procedures for record keeping, including chain of custody control.
- (f) Cannabis distribution applications. In addition to the information required in subsection (a), an application for a cannabis distribution permit must include in its operating plan information describing how the requirements in Section 88-28.420 will be satisfied, and the following additional information:
 - (1) The location and physical layout of parking, loading, and storage areas.
 - (2) A cannabis storage and handling plan that ensures quality control.

- (g) Vertically-integrated businesses. In addition to the information required in subsection (a), an application for a vertically-integrated business permit must include all information this section requires for each type of commercial cannabis activity that will be included in the vertically-integrated business.

(Ord. 2018- __, § 3.)

88-28.410 Standards applicable to all commercial cannabis activities.

The standards in this section apply to all commercial cannabis activities.

- (a) Health permit and State license required. No business may operate under a permit issued under this chapter unless and until the permittee possesses both (1) a State license authorizing the same commercial cannabis activities that are authorized under the permit, and (2) a commercial cannabis health permit issued under Chapter 413-4 of this code. Before a business begins operating, a permittee shall provide the Department (1) a copy of the permittee's State license and a copy of the State license application, and (2) a copy of the permittee's County health permit. A permittee shall provide the Department a copy of each renewed license and renewal application within 30 days after a State license is renewed. A permittee shall provide the Department a copy of each renewed County health permit within 30 days after the permit is renewed. All requirements of the permittee's State license shall be deemed to be incorporated as requirements of the permit issued under this chapter.
- (b) Location requirements.
 - (1) Notwithstanding anything to the contrary in this chapter or elsewhere in this code, no commercial cannabis activities may be located within a cannabis exclusion (-CE) combining district.
 - (2) All commercial cannabis activities shall be located within the urban limit line established pursuant to Chapter 82-1 of this code, except as follows:
 - (A) A business engaged in outdoor commercial cultivation, or a vertically-integrated business that includes outdoor cultivation, must be located outside of, and at least one mile from, the urban limit line.
 - (B) A business engaged in indoor commercial cultivation, or a vertically-integrated business that includes indoor commercial cultivation, may be located within an agricultural zoning district outside the urban limit line.
 - (C) A business engaged in manufacturing, or a vertically-integrated business that includes manufacturing, may be located outside the urban limit line.

- (D) No vertically-integrated business that includes a retailer may be located outside of the urban limit line.
- (3) A business shall meet the following buffer requirements:
 - (A) A business may not be located within 1,000 feet of any of the following located in the unincorporated County or in a city: a school providing instruction in kindergarten or any grades 1 through 12; a day care center; or a youth center; or a drug treatment center.
 - (B) A storefront retailer may not be located within 500 feet of any other storefront retailer located in the unincorporated County or in a city.

All distances specified in this section shall be the horizontal distance measured in a straight line from nearest property line to nearest property line.

- (c) Vertically-integrated businesses. A vertically-integrated business must satisfy all requirements that apply to each commercial cannabis activity in which the business is engaged under this chapter. A permit for a vertically-integrated business will include all permit requirements that apply to each category of commercial cannabis activity in which the business is engaged.
- (d) Prohibited activities. A business that is permitted under this chapter may not sell tobacco or alcoholic beverages.
- (e) Age restrictions. No persons under the age of 18 may be present on the premises of any business that has a State M-license. No persons under the age of 21 may be present on the premises of any business that has a State A-license, but does not have a State M-license. No person under the age of 21 may be present on the premises of any testing business.
- (f) Inspections. The County shall have the same rights of access that the bureau has under Title 16 of the California Code of Regulations, section 5800. A permittee shall allow access to its business and records if requested by the County, its officers, employees, or agents. A permittee, upon request, shall submit to an inspection by the County for the purpose of verifying the permittee is operating its business in compliance with the requirements of this chapter, the terms of a permit issued under this chapter, the State license, and all applicable requirements of this code and State laws and regulations. A permittee, upon request, shall provide the County with copies of records that the County requires to verify the permittee's compliance with this chapter and other applicable requirements of this code and State laws and regulations. A permittee must pay the applicable inspection fees for each County inspection.
- (g) Records. A permittee shall maintain all records in accordance with Business and Professions Code sections 26160 through 26162.5. The County shall have the same

powers as licensing authorities under Business and Professions Code sections 26160 through 26162.5.

- (h) Compliance review. The Department may perform a compliance review at any time during the term of a permit to determine whether a permittee is complying with the permit's terms and conditions, the requirements of this chapter, and all applicable laws and regulations. The Department will perform a compliance review at least once in each of the first, second, and fourth year during the initial five-year term of a permit issued under this chapter. If a permit is renewed under this chapter for one or more additional five year terms, the Department will perform a compliance review after the first two and one-half years of each renewal term. A permittee shall cooperate with the Department to complete the compliance review and must pay all applicable compliance review fees.
- (i) CEQA Compliance. The issuance of a permit under this chapter is a discretionary activity that is subject to environmental review under the California Environmental Quality Act (CEQA). A permit will not be issued under this chapter unless and until the County has completed all applicable CEQA environmental review. An applicant shall pay all costs that the County incurs to satisfy the requirements of CEQA. A permit issued under this chapter shall include appropriate measures to mitigate the impacts of commercial cannabis activities, as determined by the County during CEQA environmental review.
- (j) Unique identification protocol. A permittee must comply with all applicable track-and-trace systems developed by the State for reporting the movement of cannabis and cannabis products throughout the distribution chain.
- (k) Indemnity. As a condition of issuance of a permit under this chapter, an applicant shall be required to enter into an indemnification agreement with the County that requires the applicant to indemnify, defend (with counsel reasonably acceptable to the County), and hold harmless the County, its boards, commissions, officers, employees, and agents from any and all claims, costs, losses, actions, fees, liabilities, expenses, and damages arising from or related to the applicant's application for a land use permit, the County's discretionary approvals for the commercial cannabis activities, the County's actions pursuant to CEQA and planning and zoning laws, and the operation of the commercial cannabis activities, regardless of when those liabilities accrue.
- (l) Notifications. A permittee shall provide written notice to the Department within five days after receiving any of the following from the bureau: a notice to comply, a citation, an interim order to suspend any license or impose any restrictions upon any permittee, an order revoking a license, or any other writing informing the permittee of any disciplinary action proposed to be taken or actually taken against the permittee.

(Ord. 2018- __, § 3.)

88-28.412 Standards applicable to retailers.

The standards in this section and the standards in Section 88-28.410 apply to retailers.

- (a) Location requirements. A retailer may be located only in the following zoning districts located outside of a cannabis exclusion (-CE) combining district: planned unit development (P-1) when retailers are permitted by the development plan; retail-business (R-B); general commercial (C); controlled manufacturing (C-M); light industrial (L-I); and heavy industrial (H-I). No retailer may be located outside of the urban limit line.
- (b) Hours of operation. A delivery retailer may not be open to the public. A storefront retailer's hours of operation may not begin earlier than 8:00 a.m., and they may not end later than 9:00 p.m.
- (c) Security. A retailer shall implement and maintain the security measures required by Business and Professions Code section 26070(j). At the same time that a retailer provides notice to a licensing authority and law enforcement under Business and Professions Code section 26070(k), the retailer shall provide that same notice to the Department.
- (d) Deliveries.
 - (1) A storefront retailer may deliver cannabis or cannabis products. An application for a storefront retailer permit must indicate whether the storefront retailer will provide deliveries in accordance with the requirements of this subsection (d). Deliveries of cannabis may only be provided by retailers that operate under permits issued under this chapter. A delivery retailer shall conduct sales exclusively by delivery and may not conduct any retail sales at the premises of the storefront.
 - (2) If a retailer provides deliveries, the retailer shall ensure that its employees who deliver cannabis or cannabis products possess the following documentation while making deliveries, and the retailer shall ensure that the employees, upon request, provide the following documentation to law enforcement officers and to employees of State and local agencies enforcing this chapter and the requirements of State laws and regulations:
 - (A) A copy of the retailer's current permits, licenses, and entitlements authorizing the retailer and deliveries.
 - (B) The employee's valid government-issued identification.
 - (C) A copy of each delivery request.

- (D) Chain of custody records for all cannabis or cannabis products being delivered.
- (3) All vehicles used to deliver cannabis and cannabis products must be owned by the retailer. A retailer shall ensure that its drivers do not deliver cannabis or cannabis products on the retailer's behalf using any vehicles other than vehicles provided by the retailer.
- (4) All drivers who deliver cannabis and cannabis products on behalf of the retailer must be employed by the retailer. A retailer may not utilize independent contractors to deliver cannabis or cannabis products. A retailer shall ensure that each of its drivers possesses a valid State driver's license.
- (5) A retailer that provides deliveries shall ensure that its employees who deliver cannabis or cannabis products require customers to show State-issued identification at the time a delivery is made. A retailer shall ensure that its employees deliver cannabis and cannabis products only (A) to persons who are 21 years of age or older, or (B) to persons who are 18 years of age or older and either possess a physician's recommendation, or are primary caregivers.
- (e) Products. A retailer shall ensure that all cannabis and cannabis products at the premises of the retailer are cultivated, manufactured, transported, distributed, and tested by licensed and permitted facilities that maintain operations in full conformance with all applicable state and local laws, regulations, and ordinances, including this chapter.

(Ord. 2018- __, § 3.)

88-28.414 Standards applicable to commercial cultivation.

The standards in this section and the standards in Section 88-28.410 apply to commercial cultivation businesses.

- (a) Location requirements. Commercial cultivation may be located only in the following zoning districts outside of a cannabis exclusion (-CE) combining district: general agricultural (A-2); heavy agricultural (A-3); A-20 exclusive agricultural; A-40 exclusive agricultural; A-80 exclusive agricultural; planned unit (P-1) when commercial cultivation is permitted by the development plan; controlled manufacturing (C-M); light industrial (L-I); and heavy industrial (H-I). A business engaged in commercial cultivation may cultivate cannabis outdoors only if the business is located in a general agricultural (A-2), heavy agricultural (A-3), A-20 exclusive agricultural, A-40 exclusive agricultural, or A-80 exclusive agricultural zoning district located outside of a cannabis exclusion (-CE) combining district.

- (b) Indoor commercial cultivation. All indoor commercial cultivation must be conducted within a building, as defined in Section 82-4.210, or within a greenhouse. No indoor commercial cultivation may be conducted indoors within a residential building.
- (c) Security. A commercial cultivation business must include security measures to both deter and prevent unauthorized entrance into areas of the business used for cultivation, including the following measures.
 - (1) Indoor commercial cultivation areas must be locked, and no cannabis plants may be visible from outside of the indoor commercial cultivation areas. Outdoor cultivation areas and greenhouses must be fenced and all gates must be locked. Fencing surrounding outdoor cultivation areas and greenhouses must be designed and maintained to ensure those areas and greenhouses are not visible from adjacent lots, private roads, and public rights of way.
 - (2) Access to the premises must be limited to authorized personnel.
 - (3) The premises must include an alarm system and security cameras to monitor all cultivation areas and all entryways. The alarm system and security cameras must be monitored 24-hours per day by a licensed alarm company operator.
- (d) Water.
 - (1) To the maximum extent feasible, water conservation measures, water recapture systems, drip irrigation, raised beds, or grey water systems must be incorporated in cannabis cultivation operations in order to minimize use of water.
 - (2) Except as specified in subsection (d)(3) of this section, water service for a commercial cultivation business must be provided by a retail water supplier.
 - (3) A commercial cultivation business may satisfy its water demand by pumping groundwater from a groundwater production well if both of the following criteria are met:
 - (A) The use of groundwater by the business will not substantially deplete groundwater supplies, and will not substantially interfere with groundwater recharge, such that there would be a net deficit in aquifer volume or a lowering of the groundwater table level.
 - (B) The business uses groundwater in accordance with any applicable groundwater sustainability plan adopted by a groundwater sustainability agency within which the business is located.
- (e) Energy systems. An indoor commercial cultivation business shall satisfy its electricity demands by (1) providing onsite renewable energy generation, or (2) purchasing

electricity that is generated entirely from renewable sources, or a combination of (1) and (2).

(f) Size limits.

(1) Indoor commercial cultivation.

(A) The total canopy size for indoor commercial cultivation in other than agricultural zoning districts may not exceed the lesser of (i) 22,000 square feet, or (ii) the maximum size authorized by the State license for the business.

(B) Indoor commercial cultivation in an agricultural zoning district may not be located in any building that is larger than 10,000 square feet of floor area.

(2) Outdoor commercial cultivation. The total canopy size for outdoor cultivation may not exceed the lesser of (A) two acres, or (B) the maximum size authorized by the State license for the business.

(g) Rural infrastructure. A commercial cultivation business located outside the urban limit line shall include measures to avoid and minimize impacts on rural infrastructure, including but not limited to water, sewer, and transportation infrastructure.

(h) Distribution. A vertically-integrated business that includes both cultivation and distribution may transport its cultivated cannabis from its cultivation site to another permitted and licensed business, unless a permit under this chapter requires the permittee to use a licensed and permitted commercial cannabis distributor to transport its cultivated cannabis from its cultivation site to another business.

(Ord. 2018- __, § 3.)

88-28.416 Standards applicable to cannabis manufacturing.

The standards in this section and the standards in Section 88-28.410 apply to cannabis manufacturing businesses.

(a) Location. A cannabis manufacturing business may be located only within the following zoning districts located outside of a cannabis exclusion (-CE) combining district: planned unit development (P-1) when manufacturing cannabis or cannabis products is permitted by the development plan; general commercial (C); controlled manufacturing (C-M); light industrial (L-I); and heavy industrial (H-I); general agricultural (A-2); heavy agricultural (A-3); A-20 exclusive agricultural; A-40 exclusive agricultural; and A-80 exclusive agricultural.

- (b) No volatile solvents. Cannabis manufacturing that will require a State “Type 7” license, or will use volatile solvents, is prohibited.
- (c) Security. A cannabis manufacturing business shall implement and maintain sufficient security measures to both deter and prevent unauthorized entrance into areas containing cannabis or cannabis products, including an alarm system and security cameras that monitor all manufacturing areas and entryways and that are monitored 24-hours per day by a licensed alarm company operator.
- (d) Products. A cannabis manufacturing business shall ensure that all manufactured cannabis products are cultivated, transported, distributed, and tested by licensed and permitted facilities that maintain operations in full conformance with State laws and regulations and the applicable requirements of this chapter. A cannabis manufacturing business shall maintain adequate quality control measures to ensure cannabis and cannabis products manufactured at the site meet applicable requirements of State laws and regulations.
- (e) Employee training. A cannabis manufacturing business shall ensure that all employees of the business operating potentially hazardous equipment are trained on the proper use of equipment and on the proper hazard response protocols in the event of equipment failure.
- (f) Rural infrastructure. A cannabis manufacturing business located outside the urban limit line shall include measures to avoid and minimize impacts on rural infrastructure, including but not limited to water, sewer, and transportation infrastructure.
- (g) Distribution. A vertically-integrated business that includes both manufacturing and distribution may transport its manufactured cannabis products from its manufacturing business to another permitted and licensed business, unless a permit issued under this chapter requires the permittee to use another licensed and permitted commercial cannabis distributor to transport its manufactured cannabis products from its manufacturing business to another permitted and licensed business.

(Ord. 2018- __, § 3.)

88-28.418 Standards applicable to testing laboratories.

The standards in this section and the standards in Section 88-28.410 apply to testing laboratories.

- (a) Location. A testing laboratory may be located only within the following zoning districts located outside of a cannabis exclusion (-CE) combining district: planned unit development (P-1) when cannabis testing laboratories are permitted by the development plan; general commercial (C); controlled manufacturing (C-M); light industrial (L-I); and heavy industrial (H-I).
- (b) Restrictions. No person may simultaneously hold a cannabis testing laboratory permit and another permit issued under this chapter. A testing laboratory shall not employ any

person who is simultaneously employed by another business engaged in commercial cannabis activities.

- (c) Testing procedures. A testing laboratory shall comply with all applicable State laws and regulations, including but not limited to the requirements of Title 16 of the California Code of Regulations, sections 5700 through 5739.

(Ord. 2018- __, § 3.)

88-28.420 Standards applicable to cannabis distribution.

The standards in this section and the standards in Section 88-28.410 apply to cannabis distribution businesses.

- (a) Location. A cannabis distribution business may be located only within the following zoning districts located outside of a cannabis exclusion (-CE) combining district: planned unit development (P-1) when cannabis distribution is permitted by the development plan; general commercial (C); controlled manufacturing (C-M); light industrial (L-I); and heavy industrial (H-I).
- (b) Security. A cannabis distribution business shall implement and maintain sufficient security measures to both deter and prevent unauthorized entrance into areas containing cannabis or cannabis products. These security measures include but are not limited to the following:
 - (1) Measures to prevent individuals from loitering on the premises of the distribution business.
 - (2) Designation of limited access areas accessible only to authorized distribution business personnel.
 - (3) Storage of cannabis and cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss.
 - (4) An alarm system and security cameras that monitor all storage areas and entryways and that are monitored 24-hours per day by a licensed alarm company operator.
- (c) Distribution. A cannabis distribution business may transport cannabis and cannabis products only between permitted and licensed businesses. A cannabis distribution business shall maintain copies of all shipping manifests during transportation, and shall require employees to make the manifest available for inspection upon request by the County, its officers, employees, contractors, and agents enforcing the requirements of this chapter, including law enforcement.

- (d) Records. A cannabis distribution business shall maintain appropriate records of transactions and shipping manifests in accordance with State laws and regulations.
- (e) Testing and inspections required. A commercial cannabis distributor shall inspect cannabis and cannabis products for quality assurance before the cannabis and cannabis products are distributed. Cannabis and cannabis products shall be packaged and labeled in accordance with the requirements of State laws and regulations.
- (f) Vehicle fleet. All vehicles used to distribute cannabis and cannabis products must be owned by the cannabis distributor. A cannabis distribution business shall ensure that its drivers do not distribute cannabis or cannabis products on the business's behalf using any vehicles other than the vehicles provided by the business.
- (g) Drivers. All drivers that distribute cannabis and cannabis products on behalf of the cannabis distribution business must be employed by the business. A cannabis distribution business may not utilize independent contractors to distribute cannabis and cannabis products on behalf of the business. A cannabis distribution business shall ensure that each of its drivers possesses a valid State driver's license.

(Ord. 2018- __, § 3.)

88-28.422 Permit conditions and issuance.

- (a) The County may include, in a permit issued under this chapter, reasonable conditions of approval related to the impacts of the commercial cannabis activity.
- (b) All of the findings in Section 26-2.2008 and all of the following findings must be made before a permit is issued under this chapter:
 - (1) The application for commercial cannabis activities has been reviewed pursuant to all appropriate environmental laws and regulations, including the California Environmental Quality Act (CEQA).
 - (3) All mitigation measures identified by the County during CEQA environmental review are included as permit terms.
 - (4) A finding that the permit includes conditions to avoid adverse impacts to surrounding communities, neighborhoods, and sensitive receptors, including but not limited to libraries and parks.
 - (5) A finding that the permit includes conditions to fully mitigate the effects of a commercial cannabis activity that may pose a significant threat to the public or to neighboring uses from explosion, or from the release of harmful gases, liquids, or substances. If any of those threats cannot be fully mitigated, a permit under this

chapter will not be issued for the commercial cannabis activity giving rise to that threat.

- (6) The applicant has entered into an indemnity agreement that meets the requirements of Section 88-28.410(m).
- (7) The applicant has paid all applicable fees and costs charged by the County and made all deposits required by the County, including but not limited to the application fee, all fees and costs required to complete CEQA environmental review, and all compliance review fees and deposits. The permit will require payment of all fees for compliance reviews and inspections of the business.

(Ord. 2018- __, § 3.)

88-28.424 Permit renewal.

- (a) Eligibility for renewal. A permit issued under this chapter may be renewed for one or more five-year terms, one term at a time, only if the following requirements are met as of the date the renewal request is made:
 - (1) The permittee is in compliance with all of the terms of the permit being renewed, and there are no grounds to suspend or revoke the permit under this chapter or under Article 26-2.20.
 - (2) The commercial cannabis activity authorized under the permit is authorized by this code as of the date the renewal request is made.
 - (3) The permittee maintains a current State license and current County health permit for each commercial cannabis activity authorized by the permit being renewed.
- (b) Timing of request. A permit renewal request must be submitted to the Department at least 60 days before the expiration of the permit's current term.
- (c) Required submittals. A permit renewal request must be made on forms provided by the Department. A permit renewal request must be submitted with all of the following:
 - (1) A copy of the permit being renewed.
 - (2) A copy of a current State license authorizing each commercial cannabis activity that is authorized under the permit being renewed.
 - (3) A copy of the original permit application.
 - (4) A copy of any environmental document that was certified for the permit.

- (d) Approval of renewal request. A permit renewal request will be approved by the zoning administrator, after the zoning administrator determines all of the following:
 - (1) The permit renewal request and all required submittals were timely received.
 - (2) The permit is eligible for renewal under this Section 88-28.424.
 - (3) The applicant has paid all applicable fees required by the County, and has made all deposits required by the County, including but not limited to a renewal application fee and a condition compliance fee deposit.

(Ord. 2018- __, § 3.)

Article 88-28.6 Suspension, Revocation, and Enforcement

88-28.602 Grounds for Suspension or Revocation.

In addition to the grounds for permit suspension or revocation set forth in Article 26-2.20, a permit issued under this chapter may be suspended or revoked on any of the following grounds:

- (a) A permittee has not complied with one or more of the conditions of the permit issued under this chapter.
- (b) A permit was issued under this chapter based on any false material information, written or oral, given by the permittee.
- (c) A permittee has not complied with the requirements of this chapter, any other applicable requirements of this code, or any requirements of State laws or regulations.
- (d) A permittee's State license has been suspended or revoked.
- (e) A permittee's County health permit has been suspended or revoked.
- (f) A permittee has possessed or delivered any form of illegal drugs without proper legal authorization.
- (g) A permittee fails to pay any fee, or make any deposit, required by the County as a condition of permit issuance, including but not limited to all condition compliance fees and deposits required by the County.

(Ord. 2018- __, § 3.)

88-28.604 Modification, suspension, and revocation. A permit issued under this chapter may be modified, suspended, or revoked in the same manner as other conditional use permits under Article 26-2.20. (Ord. 2018- __, § 3.)

88-28.606 Enforcement. The County may enforce this chapter by any remedy allowed under this code and any other remedy allowed by law. (Ord. 2018- __, § 3.)

SECTION 4. Chapter 84-86 is added to the County Ordinance Code to read as follows:

Chapter 84-86
CANNABIS EXCLUSION (-CE) COMBINING DISTRICT

84-86.202 Cannabis exclusion combining district. All land within a land use district combined with a cannabis exclusion (-CE) combining district is subject to the additional regulations set forth in this chapter. (Ord. 2018- __, § 4.)

84-86.204 Applicability. The cannabis exclusion (-CE) combining district applies to all property in all zoning district in the following communities and geographic areas of the county.

- (a) Bethel Island.
- (b) Sandmound Slough.
- (c) Saranap.
- (d) Acalanes Ridge.
- (e) Alamo.
- (f) Contra Costa Centre.

(Ord. 2018- __, § 4.)

84-86.206 Priority. If there is any conflict between the requirements of this chapter and those of the underlying zoning district, the requirements of this chapter govern. (Ord. 2018- __, § 4.)

84-86.208 Definitions. For the purposes of this chapter, the term “commercial cannabis activities” has the same meaning as in chapter 88-28. (Ord. 2018- __, § 4.)

84-86.210 Permitted uses. Except as provided by Section 84-86.212, all uses allowed in the underlying zoning district are permitted within the -CE district. (Ord. 2018- __, § 4.)

84-86.212 Prohibited uses. Commercial cannabis activities are prohibited within the -CE district, regardless of the underlying zoning district. (Ord. 2018- __, § 4.)

SECTION 5. The following sections of the Ordinance Code are amended as follows, to allow commercial cannabis activities with a land use permit under Chapter 88-28 of this code.

ORDINANCE NO. 2018-18

- (a) Section 84-38.404 of the County Ordinance Code is amended to add the following subsection (26) as a permitted use within an A-2 district under a land use permit:

“(26) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (b) Section 84-40.404 of the County Ordinance Code is amended to add the following subsection (3) as a permitted use within an A-3 district under a land use permit:

“(3) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (c) Section 84-52.404 of the County Ordinance Code is amended to add the following subsection (16) as a permitted use within a R-B district under a land use permit:

“(16) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (d) Section 84-54.404 of the County Ordinance Code is amended to add the following subsection (8) as a permitted use within a C district under a land use permit:

“(8) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (e) Section 84-56.404 of the County Ordinance Code is amended to add the following subsection (3) as a permitted use within a C-M district under a land use permit:

“(3) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (f) Section 84-58.404 of the County Ordinance Code is amended to read as follows:

“84-58.404 Uses—Requiring land use permit.

 - (1) All of the uses in the following districts are permitted after the granting of land use permits: single-family residential districts, multiple family residential districts, retail business districts, neighborhood business districts, general commercial districts, agricultural districts and forestry recreation districts.
 - (2) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (g) Section 84-66.402 of the County Ordinance Code is amended to add the following subsection (5) as a permitted use within a P-1 district under a land use permit:

“(5) Commercial cannabis activities that meet the requirements of Chapter 88-28.”
- (h) Section 84-80.404 of the County Ordinance Code is amended to add the following subsection (22) as a permitted use within an A-20 exclusive agricultural district with a land use permit:

“(22) Commercial cannabis activities that meet the requirements of Chapter 88-28.”

(Ord. 2018- __, § 5.)

SECTION 6. Effective Date and Operative Date. This ordinance becomes effective, but not operative, 30 days following its adoption by the Board of Supervisors. This ordinance will become operative on the effective date of the Contra Costa County Cannabis Business Tax Ordinance only if the tax ordinance is approved by a majority of voters voting on the tax ordinance at the November 6, 2018, general election. Within 15 days after passage this ordinance shall be published in the East Bay Times, a newspaper published in this County, in a manner satisfying the requirements of Government Code section 25124, with the names of supervisors voting for and against it.

PASSED on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:	DAVID J. TWA	_____
	Clerk of the Board of Supervisors	Board Chair
	and County Administrator	

By:	_____	[SEAL]
	Deputy	

SMS

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