

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANT HILL
AMENDING THE ZONING ORDINANCE, INCLUDING PLEASANT HILL
MUNICIPAL CODE SECTIONS 18.15.040, 18.20.070, 18.25.020, 18.50.140, AND 18.140.010,
AND ADDING SECTION 18.25.170 ENTITLED “CANNABIS RETAILERS,” TO PROHIBIT
ALL COMMERCIAL CANNABIS USES AND TO CONDITIONALLY
ALLOW MEDICAL CANNABIS RETAILERS IN LIGHT INDUSTRIAL (LI), GENERAL
COMMERCIAL (C) PROFESSIONAL AND ADMINISTRATIVE OFFICE (PAO) AND
RETAIL BUSINESS (RB) (SECOND FLOOR AND ABOVE) ZONING DISTRICTS

WHEREAS, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the state’s history adopted comprehensive regulations and state licensing for medical marijuana businesses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which regulates the recreational use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use or recreational marijuana businesses; and

WHEREAS, Senate Bill 94 (“SB 94”), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate and streamline the state licensing scheme applicable to both medical and non-medical commercial cannabis activity, including authorized cannabis retailers; and

WHEREAS, the consolidated law is now entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

WHEREAS, by this ordinance the City Council desires to authorize and regulate medical cannabis retailers only, subject to reasonable land use and zoning regulations that mitigate potential adverse impacts associated with commercial retail sales of medicinal cannabis; and

WHEREAS, the City Council finds that that this Ordinance imposes reasonable zoning regulations on medical cannabis retailers by ensuring that such uses are conditionally permitted in existing zones that currently permit similar retail and mixed uses in the City, subject to zoning standards and locational restrictions that minimize access by minors and potential neighborhood impacts; and

WHEREAS, this Ordinance further appropriately and adequately mitigates and minimizes potential adverse impacts related to safety and offensive odors associated with medicinal cannabis retail sales by limiting the total numbers and available locations of such uses, imposing reasonable zoning regulations and standards on such uses; and

WHEREAS, except for medicinal cannabis retail sales conditionally authorized herein, the City desires to prohibit the establishment of all other commercial medical and adult-use commercial cannabis uses within the City of Pleasant Hill unless and until such uses are expressly approved by subsequent ordinance(s) of the City Council as authorized by Business & Professions Code Section 26200; and

WHEREAS, Business and Professions Code section 26055, subdivision (h), until July 1, 2019, provides that the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity, so long as the discretionary review includes any applicable environmental review pursuant to CEQA; and

WHEREAS, Section 15061(b)(3) of the CEQA Guidelines, provides that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The medical cannabis businesses authorized under this Ordinance are similar to already existing permitted retail uses, with the only difference being the product sold (i.e. medical cannabis). The Ordinance does not change the zoning for any properties and these general categories of uses are already permitted by right, meaning that they do not create negative environmental impacts or result in physical changes to the environment; and

WHEREAS, the City Council of the City of Pleasant Hill adopts this Ordinance in order to effect land use regulations reasonably regulating the retail sale of medicinal cannabis and prohibiting the establishment all other cannabis businesses, as contemplated by Business & Professions Code, Section 26200.

NOW, THEREFORE, the City Council of the City of Pleasant Hill does ordain as follows:

SECTION 1. Section 18.50.140 entitled “Personal cultivation of marijuana – Medical marijuana dispensaries” of the Pleasant Hill Municipal Code is hereby re-titled “Marijuana/Cannabis,” and Subsection (B) of Section 18.50.140 is hereby amended and restated as follows:

“B. Commercial cannabis uses. All commercial cannabis uses are expressly prohibited in all base zoning districts and overlay zoning districts unless and until one or more such uses is expressly and affirmatively authorized by this code. The foregoing prohibition shall not apply to:

1. Conduct specified in Business and Professions Code, §§ 26054(c) and (d), 26080(b), or 26090(e).
2. Cannabis delivery originating from a cannabis retailer located outside of the city.
3. The activities of an individual qualified patient or an individual primary caregiver that are exempt from State licensure pursuant to Business and Professions Code, § 26033, or a natural person’s personal use activities in accordance with Health and Safety Code, §§ 11362.1 and 11362.2, applicable state law and this code.

4. Cannabis temporary events. However, Cannabis temporary events, as provided under Business and Professions Code, §26200, are prohibited in the city unless specifically authorized by separate resolution or ordinance of the city council.”

SECTION 2. Section 18.15.040 (Commercial use classifications) of the Pleasant Hill Municipal Code is hereby amended to add the following use classification for “cannabis retailer” as follows:

“**Cannabis retailer** means a facility or premises located in the city where cannabis or cannabis products, in any amount or form, either individually or in combination, are offered or provided for retail sale or other sales or transfer to consumers. A cannabis retailer includes an establishment that delivers cannabis as part of a retail sale. The term “cannabis retailer” includes the following subtypes:

- a. **Cannabis retailer, medical.** A cannabis retailer selling medicinal cannabis and medicinal cannabis products to qualified patients with valid physicians’ recommendations, persons with an identification card, and primary caregivers, as each is defined in Health and Safety Code § 11362.7, as amended. A medical cannabis retailer includes a medical marijuana dispensary.
- b. **Cannabis retailer, adult-use.** A cannabis retailer selling adult-use cannabis and cannabis products for adults 21 years of age and over.”

Except as provided herein, all other use classifications contained in Section 18.15.040 of the Pleasant Hill Municipal Code shall remain in full force and effect.

SECTION 3. The use classifications for adult-use and medical cannabis retailers are hereby added to Schedule 18.25.020 (“NB, RB, PAO, C, and LI Districts: Land Use Regulations”) of Section 18.25.020 of the Pleasant Hill Municipal Code as follows:

	<u>NB</u>	<u>RB</u>	<u>PAO</u>	<u>C</u>	<u>LI</u>	Additional Use Regulations
Cannabis retailer, medical	=	<u>L-18</u>	<u>U</u>	<u>U</u>	<u>U</u>	See PHMC Section 18.25.170”
Cannabis retailer, adult-use	=	=	=	=	=	

NB, RB, PAO, C and LI: Limitations on Specific Use Classifications

L-18 – Allowed on the second floor and above, through approval of a use permit

SECTION 4. Section 18.25.170 entitled “Cannabis retailers” is hereby added to Chapter 18.25 (“Commercial, Retail Business, Neighborhood Business, Office and Light Industrial Districts”) of the Pleasant Hill Municipal Code to read in full as follows:

“18.25.170 Cannabis retailers.

A. Medical cannabis retailers.

1. Medical cannabis retailers may be located in any Light Industrial (LI), General Commercial (C), or Professional and Administrative Office (PAO) zoning district, subject to the granting of a use permit pursuant to chapter 18.95, the other limitations of this chapter, and the following restrictions:
 - a. A medical cannabis retailer’s premises shall be closed to the public (i.e., no public storefront). The medical cannabis retailer shall conduct sales exclusively by delivery.
 - b. Medical cannabis retailers are prohibited from establishing or locating within 600 feet of a public or private school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, as defined by state law. For the purposes of this section, all distances shall be measured from the outer extents of the cannabis retailer’s business premises (whether leased or owned) excluding parking facilities and common areas to the nearest property lines of each affected parcel.
 - e. The City shall issue no more than two (2) conditional use permits for medical cannabis retailers.
 - f. A medical cannabis retailer’s business premises (excluding parking facilities and common areas) shall not exceed a gross floor area of 10,000 square feet.
 - g. Medical cannabis retailers shall obtain and maintain a state license for retail medicinal cannabis sales in accordance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code, Division 10, § 26000 et seq.
 - h. Medical cannabis retailers shall not create a public nuisance through offensive odors.
 - i. Onsite consumption of medicinal cannabis or medicinal cannabis products is prohibited.
 - j. Medical cannabis retail use shall be conducted indoors only, with no outdoor use/activity related to the cannabis retailer use.

k. Renderings of the business façade shall be provided and reviewed as part of the conditional use permit. Building façade plans shall include renderings of the exterior building elevations and any proposed signage for all sides of the building. All building facades and signage shall be in keeping with the high architectural quality and design standards of the City of Pleasant Hill. The business façade and building signs shall be compatible and complimentary to surrounding businesses and shall add visual quality to the area.

B. Adult-use cannabis retailers. Without limiting the generality of the prohibition on commercial cannabis uses in PHMC § 18.50.140.B, adult-use cannabis retailers are prohibited in all base zoning districts and overlay districts in the city.

C. Applicability of other regulations. The provisions in this chapter are not intended to provide exclusive regulation of cannabis retailers. Any entity or individual engaged in the business of cannabis retail sales must comply with any and all applicable regulations imposed in other parts of the zoning ordinance, other city ordinances (including, without limitation, PHMC Title 5 and Title 6), and state law.

D. It is anticipated that the number of applications could exceed the number of allowable permits for cannabis retailers. The City shall not accept applications until the City Council has adopted a resolution setting forth the application period, application procedures and guidelines to evaluate applications for cannabis retailer permits. The City Council expects, but is not required, to adopt application guidelines on or before January 1, 2020.”

SECTION 5. Pleasant Hill Municipal Code Section 18.20.070(D) (“Home occupations” – “Prohibited activities”) is hereby amended to add subsection (6) as follows:

“6. Any commercial cannabis uses or activities, including but not limited to, the operation of a cannabis retailer, cannabis delivery service and/or the storage of cannabis in excess of those amounts permitted for personal use pursuant to Health and Safety Code § 11362.1 et seq.”

All other provisions contained in Section 18.20.070 of the Pleasant Hill Municipal Code shall remain in full force and effect.

SECTION 6. Pleasant Hill Municipal Code Section 18.140.010 (“Definitions”) is hereby amended to add the definition of “commercial cannabis use” as follows:

“Commercial cannabis use. Commercial cannabis use means and includes the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, wholesale or retail delivery, wholesale or retail sale of cannabis and cannabis products, or any combination of such activities, whether or not carried out for profit, and any other activity that requires a

license, or may require a license in the future, pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code, Division 10, § 26000 et seq. Without limiting the forgoing, the term “commercial cannabis use” also includes a medical marijuana dispensary, a patient collective or patient cooperative operating under the Compassionate Use Act (Health and Safety Code, § 11362.5) and/or the Medical Marijuana Program Act (Health and Safety Code, § 11362.7 et seq.), as each may be amended; a nonprofit licensee under Business and Professions Code, § 26070.5; and a cannabis cooperative association under Business and Professions Code, § 26220 et seq.”

SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. CEQA. This Ordinance imposes reasonable zoning regulations on medical cannabis retailers to ensure that such uses are conditionally permitted in existing zones where retail activities are generally permitted, subject to zoning standards and locational restrictions that minimize access by minors and potential neighborhood impacts. This Ordinance also prohibits the establishment of all other types of State licensed commercial cannabis uses. Accordingly, this Ordinance will not result in any significant changes to the environment within the meaning of Section 15061(b)(3) of Title 14 of the California Code of Regulations. Additionally, medical cannabis retailers authorized by this Ordinance are subject to the granting of a use permit, which requires discretionary review subject to environmental review under CEQA. As such, this Ordinance is also exempt from CEQA pursuant to Business and Professions Code Section 26055(h).

SECTION 9. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it or a summary of it to be posted in the three public places designated by resolution of the City Council.

SECTION 10. The City Clerk shall file a copy of this Ordinance with the Bureau of Cannabis Control, in the time and manner required by Business and Professions Code, Section 26055(f).

[Signatures on Following Page]

The foregoing ordinance was introduced at a regular meeting of the Pleasant Hill City Council, held in said City on the 15th day of July, 2019.

ADOPTED and ordered posted at a meeting of the City Council of the City of Pleasant Hill, held on the ____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

KENNETH CARLSON, Mayor

ATTEST:

CAROL W. WU, City Clerk

APPROVED AS TO FORM:

JANET E. COLESON, City Attorney