

ORDINANCE NO. 2018-422

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA VALLEY ADDING CHAPTER 18.39 [CANNABIS LAND USES] TO TITLE 18 [ZONING] AND AMENDING SECTION 8.12.010 [DEFINITION OF NUISANCE] OF CHAPTER 8.12 [NUISANCE ABATEMENT] OF TITLE 8 [HEALTH & SAFETY] OF THE PORTOLA VALLEY MUNICIPAL CODE

WHEREAS, Proposition 64 or the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) took effect on November 9, 2016 and made it legal for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; possess, process, transport, purchase, obtain or give away to persons of 21 years of age or older 28.5 grams of marijuana or eight grams of concentrated marijuana; and possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use; and

WHEREAS, the AUMA allows local governments to impose reasonable regulations on indoor cultivation and to regulate or ban outdoor cultivation or other cannabis land uses; and

WHEREAS, Senate Bill 94 took effect on June 27, 2017 and blended together the non-medical marijuana regulations in the AUMA and the Medical Cannabis Regulation and Safety Act (“MCRSA”) to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, after a study session on December 6, 2018, the Planning Commission of the Town of Portola Valley (“Town”) formed a subcommittee consisting of Commissioner Targ and Commissioner Gould to help Town staff prepare an ordinance relative to the reasonable regulation and/or ban of cannabis land uses;

WHEREAS, on February 7 and 28, 2018, the Planning Commission held public hearings to review the draft ordinance regarding cannabis land uses at which all interested persons had the opportunity to appear and after considering the entire record of proceedings, including but not limited to, the staff report and all written and oral comments received, the Planning Commission voted to recommend that the Town Council approve the ordinance; and

WHEREAS, on March 28, 2018, the Town Council held a public hearing to review the proposed ordinance regarding cannabis land uses at which all interested persons had the opportunity to appear and after considering the entire record of proceedings, including but not limited to, the staff report and all written and oral comments received and the Planning Commission recommendation, the Town Council voted to approve the ordinance.

NOW, THEREFORE, the Town Council of the Town of Portola Valley does **ORDAIN** as follows:

1. ADDITION OF CODE. Chapter 18.39 [Cannabis Land Uses] is hereby added to Title 18 [Zoning] of the Portola Valley Municipal Code to read as follows:

Chapter 18.39 Cannabis Land Uses

- 18.39.010 Purpose**
- 18.39.020 Definitions**
- 18.39.030 Prohibited and Permitted Cannabis Activities**
- 18.39.040 Specific Non-Commercial Cannabis Activities Allowed**
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- 18.39.090 Appeal to Town Council**
- 18.39.100 Permit Renewal**
- 18.39.110 Permit Nontransferable**
- 18.39.120 Fees**
- 18.39.130 Taxes**
- 18.39.140 Commercial Cannabis Development Criteria and Operating Requirements**
- 18.39.150 Record Retention**
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18.39.010 Purpose

Proposition 64 or the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) took effect on November 9, 2016 and made it legal for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; possess, process, transport, purchase, obtain or give away to persons of 21 years of age or older 28.5 grams of marijuana or eight grams of concentrated marijuana; and possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. Senate Bill 94 took effect on June 27, 2017 and blended together the non-medical marijuana regulations in the AUMA and the Medical Cannabis Regulation and Safety Act (“MCRSA”) to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). Pursuant to these laws, local agencies may impose reasonable regulations on indoor cultivation and regulate or ban outdoor cultivation or other cannabis land uses. The purpose of this Chapter is to implement reasonable regulations for cannabis land uses that protect the health, safety and welfare of the Town.

18.39.020 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth herein:

A. "Applicant" means a Person who has applied for a Permit under this Chapter.

B. "Application" means that form approved by the Town Planning and Building Director and provided by the Department in accordance with this Chapter for the purpose of seeking a Permit.

C. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Cannabis also means the separated resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, Cannabis does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

D. "Cannabis Products" has the same meaning as in California Health and Safety Code Section 11018.1 as may be amended from time to time.

E. "Commercial Cannabis Activity" includes the Cultivation, Manufacturing, Distribution, Processing, warehousing, storing, Testing, packaging, labeling, transportation, delivery, Retail Sale of Cannabis and Cannabis Products or Cannabis events as provided for in this Chapter or under State rule, law, or regulation.

F. "Cultivation" means any activity involving the planting, growing, fertilizing, irrigating, harvesting, drying, curing, grading, trimming, and/or storing of Cannabis whether in or outdoors and the related sale of such cultivated Cannabis.

G. "Customer" means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation or a natural person 14 years of age or older with parental/guardian permission.

H. "Department" means the Town of Portola Valley Planning and Building Department.

I. "Distribution" means the procurement, sale, and transport of Cannabis and Cannabis Products between Permittees.

J. "Indoor Cultivation" means Cultivation indoors using exclusively artificial lighting.

K. "Manufacturing" means compounding, converting, producing, deriving, or preparing, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, Cannabis or Cannabis Products.

L. "Mixed-Light Cultivation" means Cultivation using light deprivation and/or any combination of natural and supplemental artificial lighting. Greenhouses and similar structures or spaces of sufficient size to permit entry enclosed with a nonporous covering or light deprivation systems are included in this category. This category does not include structures constructed of porous cloth or other porous material(s).

M. "Outdoor Cultivation" means Cultivation using no artificial lighting conducted in the ground, in containers outdoors, or in structures constructed of porous material(s).

O. "Permit" or "Cannabis Permit" means a permit issued by the Town for Commercial Cannabis Activity permitted pursuant to this Chapter.

P. "Permittee" means any Applicant issued a Permit under this Chapter.

Q. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company (LLC), estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

R. "Premises" means the property specified in the Application that is owned by the Applicant/ Permittee where the Commercial Cannabis Activity will be or is conducted. The Application shall specify the area of land on the property and/or the structure or structures where Commercial Cannabis Activity will be or is conducted. The Premises shall be a contiguous area and shall only be occupied by one Permittee.

S. "Retail Sale" means any transaction whereby, for any consideration, Cannabis or Cannabis Products is sold to a Customer, and includes the delivery of Cannabis or Cannabis Products.

T. "Sensitive Receptor" means schools providing education to K-12 grades, day care centers, Youth Centers, public parks, including but not limited to the following: Windmill School (900 Portola Road); Creekside Learning Lab (884 B-1 Portola Road); Christ Church (815 Portola Road); Ormondale School (200 Shawnee Pass); Corte Madera School (4575 Alpine Road); Woodside Priory School (302 Portola Road); Ladera Church (3300 Alpine Road); Town Hall Campus (765 Portola Road); Rossotti Field (3919 Alpine Road); Ford Field (3399 Alpine Road); Alpine Hills Swim & Tennis Club (4139 Alpine Road); Triangle Park (Portola/Alpine Roads).

U. "State" means the State of California.

V. "State Permit" means a permit to conduct Commercial Cannabis Activity issued by the State.

W. "Testing" means the testing of Cannabis or Cannabis Products by an authorized laboratory, facility, entity, or Person.

X. "Youth Center" shall have the same meaning as defined by California Health and Safety Code Section 11353.1 and shall also include publicly owned facilities and properties that support activities for youth and children.

18.39.030 Prohibited and Permitted Commercial Cannabis Activities

A. Prohibited. Unless expressly authorized by this Chapter, no Commercial Cannabis Activities for either medical or personal purposes are allowed in the Town of Portola Valley. The intent of this Chapter is only to permit cultivation of up to 12 commercial cannabis plants on any single property in any residential zoning district. No Permit for Commercial Cannabis Activity shall be issued for any other purpose or in any other zoning district, including but not limited to land zoned O-A or C-C.

B. Permitted with State and Local Permit. Only the following Commercial Cannabis activity may occur in the Town of Portola Valley pursuant to valid State and Town Permits:

1. Commercial Cultivation of Cannabis. Commercial cultivation of up to a maximum of twelve cannabis plants may be conducted subject to a Cannabis Permit only on residentially zoned lands.

C. Permitted with State Permit. The following Commercial Cannabis activities may occur in the Town of Portola Valley pursuant to a valid State Permit:

1. Transportation of Cannabis on public roads as expressly authorized under California Business and Professions Code Section 26080(b).

2. Lawful delivery of Cannabis to a Customer on public roads; however, no physical location for such delivery service shall be permitted within the Town of Portola Valley.

18.39.040 Specific Non-Commercial Cannabis Activities Allowed

The following are exempt from the permitting requirements of this Chapter:

A. Personal Indoor Cultivation. A natural person 21 years of age or older who engages in Cannabis Cultivation, subject to the cultivation limit in subsection C below, exclusively for personal use inside a private residence or inside a permitted accessory structure to a private residence located upon the grounds of a private residence as authorized by California Health and Safety Code Section 11362.1.

B. Personal Outdoor Cultivation. A natural person 21 years of age or older who engages in Cannabis Cultivation, subject to the Cultivation limit subject to the cultivation limit in subsection C below, exclusively for personal use outside a private residence as

authorized by California Health and Safety Code Section 11362.1. Notwithstanding the foregoing, any personal outdoor Cultivation shall be in compliance with the following requirements:

1. Shall not be in ordinary public view from public rights of way, publicly owned or maintained trails and public parks;
2. Shall be at least 600 feet away from any Sensitive Receptor. The 600 feet shall be measured in a straight line from the closest property line of the Sensitive Receptor to the actual Cultivation site; and
3. The odor from Cultivation must not be detectible off the grounds of the private residence or from any place accessible to the public.

C. Cultivation Limit. For both personal indoor Cultivation and personal outdoor Cultivation, not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. No Cannabis may be grown within the minimum setback required for the zoning district.

18.39.050 Town Commercial Cannabis Activity Permit Required

A. Any Person who intends to engage in a permitted Commercial Cannabis Activity in the Town shall obtain a Cannabis Permit in accordance with this Chapter for each Premises in the Town where proposed Commercial Cannabis Activity is to occur. A Cannabis Permit from the Town is not valid and the Commercial Cannabis Activity may not commence unless and until the Applicant obtains a valid license from the State for the same Commercial Cannabis Activity permitted by the Town. An Applicant shall provide a copy of the State license to the Department prior to commencing Cultivation.

B. Any Cannabis Permit issued under this Chapter does not provide any protection or immunity for any Person from State or federal laws, or from prosecution pursuant to any applicable State or federal laws.

18.39.060 Commercial Cannabis Activity Application Requirements

A. Each Application shall be filed with the Town, under penalty of perjury on the form provided and in the manner required by the Department.

B. An Application shall not be deemed complete until all required Application fees have been paid, and all questions, comments and/or requests for information have been addressed to the satisfaction of the Planning and Building Director.

18.39.070 Review of Commercial Cannabis Activity Permits

A. Processing of Application. The Department will review the Application. The Department will provide a copy of the Application for review and comment to the San Mateo County Sheriff's Department and the Woodside Fire Protection District. The proposed Premises may be subject to an inspection by the Department, the Sheriff's Department and Fire District prior to the public hearing on the Application, which will not be set until the Department determines that the Application is complete. If the Department determines the Application is incomplete, the Department will provide notice to the

Applicant, who shall have 30 days to complete all deficiencies. If the Applicant fails to complete the deficiencies within the 30-day period, the Application shall be deemed abandoned. The Applicant may reapply at any time following an abandoned Application. The Department will not refund any fees for incomplete or abandoned Applications.

B. Commercial Cannabis Permit Required. A Cannabis Permit shall be required for Commercial Cannabis Cultivation. The application procedures for the Cannabis Permit shall be as provided for in Chapter 18.72 of this title. The Planning Commission may grant a Cannabis Permit if it makes the following findings:

1. The proposed activity complies with the findings set forth in 18.72.130 (Conditional Use Permit findings).

2. The proposed activity is no more objectionable than the conditionally permitted uses allowed in the underlying residential zone with respect to public safety, security, environmental impacts, level of noise, traffic, odors, glare and other impacts normally associated with other listed uses.

4. The proposed activity complies with all of the development criteria and operating requirements in Section 18.39.140.

5. The Applicant has an established account in a State-approved track and trace in accordance with Section 18.39.160.

6. The proposed activity complies with the requirements set forth in this Chapter and State law.

C. Duration of Permit. Each Permit shall be granted for a one-year period and shall expire one year after the date of its issuance. Nothing herein is intended to limit the number of times an Applicant may apply to renew the Cannabis Permit issued by the Town.

D. Permit Conditions. In addition to any conditions imposed by the Planning Commission, all Permits shall include statements conveying the following information, displayed prominently on the Permit itself:

1. A warning that Permittees, supervisors, employees, and any other Persons involved in Commercial Cannabis Activities may be subject to prosecution under State or federal laws; and

2. An acknowledgment that, by accepting the Permit and engaging in a Commercial Cannabis Activity, the Permittee has released the Town and its officers, insurers, sureties, agents, Town Council members, attorneys, employees, and representatives from and against any all liability, and will defend and indemnify them, for any monetary damages related to or arising from issuance of the Permit, authorizing Permittee to engage in an authorized Commercial Cannabis Activity, enforcement of requirements or conditions related to the Permit, and/or revocation of the Permit.

3. All Cannabis Permits shall be valid only while the Permittee is in possession of a valid State license for the same cannabis activity authorized by the Town issued Cannabis Permit.

18.39.080 Grounds for Denial of an Application

A. The Planning Commission shall deny an Application for a Commercial Cannabis Permit for any of the following reasons:

1. The Planning Commission is unable to make the findings in Section 18.39.070(B) above.
2. The Applicant made a knowingly false statement of a material fact in the Application or knowingly omitted a material fact from the Application;
3. The proposed Commercial Cannabis Activities do not fully comply with the requirements of this Chapter or any State law or regulation;
4. The Applicant failed to provide all information required in the Application and/or failed to allow a pre-inspection of the proposed Premises;
5. An Applicant is subject to prosecution or has been convicted or sanctioned for an offense or violation set forth under California Business & Professions Code Section 26057(b)(4), (b)(6);
6. An Applicant has been sanctioned by the State or any other licensing authority for unauthorized Commercial Cannabis Activities or has had a State Permit or any other Permit for Commercial Cannabis Activities suspended or revoked in the three (3) years immediately preceding the date the Application is filed; or
7. Any other valid reason in the Planning Commission's reasonable discretion.

B. Notice of the decision to deny an Application specifying the reason(s) for the denial shall be provided in writing to the Applicant. The Applicant may appeal denial of its Application to the Town Council as set forth below in Section 18.39.090. No new Application(s) for a Permit on Premises where an Application has been denied shall be accepted for a period of one (1) year from the date of denial.

18.39.090 Appeal to Town Council

Action of the Planning Commission in approving or disapproving the grant of a Cannabis Permit may be appealed to the Town Council in accordance with Sections 18.78.010 through 18.78.110 or the Town Council may elect to review the action of the Planning Commission in accordance with the provisions of Section 18.78.120.

18.39.100 Permit Renewal

A. To renew a Permit, a completed Permit renewal Application on a form approved by the Planning and Building Director and renewal fee shall be received by the Department no fewer than sixty (60) calendar days before the expiration of the Permit. The Permit renewal Application shall not be deemed complete until all renewal fees have been paid. Upon receipt of a complete Permit renewal Application, the Department shall notify all adjacent property owners of the submittal at least 30 days prior to the issuance of the renewal.

B. In the event the Permit is not renewed prior to the expiration date, it shall be deemed expired and the Permittee must cease all Commercial Cannabis Activity until such time that the Permittee is issued a new Permit in accordance with this Chapter. The Permittee will be subject to enforcement actions pursuant to Chapter 1.12, Code Compliance, for continuing operations after a Permit has expired without a renewal.

C. Permit renewal applications are subject to review and decision by the Planning and Building Director. The Planning and Building Direction, however, has discretion to elevate

any Permit renewal Application to the Planning Commission for review and decision. The Planning and Building Director shall deny any request for a Permit renewal for any of the following reasons:

1. The Permit renewal Application is filed fewer than sixty (60) calendar days before expiration of the Permit;
2. The Permittee does not fully comply with the requirements of this Chapter or any State rule, law, or regulation;
3. The Permittee has failed to provide all information required in the Permit renewal application and/or has failed to allow a requested inspection of the Premises;
4. The Permittee has any outstanding taxes, fees, or fines owed to the Department or to the Town;
5. The Permit is suspended or revoked at the time of the request for Permit renewal;
6. The Permittee is subject to prosecution or has been convicted or sanctioned for an offense or violation set forth under California Business & Professions Code Section 26057(b)(4), (b)(6);
7. The Permittee has been sanctioned by the State or any other licensing authority for unauthorized Commercial Cannabis Activities or has had a State Permit or any other Permit, permit, or authorization for Commercial Cannabis Activity suspended or revoked between the time the original Permit was issued and the filing of the request for Permit renewal; or
8. The Permittee no longer meets the residency requirements of this Chapter.

D. If a request for a Permit renewal is denied, a new Application may be filed pursuant to this Chapter. However, no new Application(s) for a Permit on Premises where an Application to renew a Permit has been denied shall be accepted for a period of six (6) months from the date of denial.

E. Notice of the decision to deny or approve a request for a Permit renewal specifying the reason(s) for the denial shall be provided in writing to the Permittee. The Permittee may appeal the denial of a request for a Permit renewal to the Planning Commission.

F. The Planning and Building Director shall provide an informational item to the Planning Commission regarding any and all Permit renewals prior to the effective date of the renewal. The informational report shall include, but not be limited to, any comments received on the Permittee's Commercial Cannabis Activities within the year prior to the renewal Application. The Planning Commission may request that a public hearing be conducted on any Permit renewal Application. The public hearing shall be conducted de novo pursuant to the criteria set forth in this section. The Planning Commission's decision shall be appealable to the Town Council. Any appeal to the Town Council shall be subject to a de novo public hearing pursuant to the criteria set forth in this section.

18.39.110 Permit Nontransferable

A. A Permit issued under this Chapter does not create any interest of value, is not transferable, and automatically terminates upon attempt to transfer ownership of the Permit. Any change in the Permittee's ownership, control or management requires a new

Application pursuant to Section 18.39.070. In the event a new Permit is not issued by the Town prior to transfer of ownership, the Permit shall be deemed revoked and any activities on the Premises for which the Permit was issued must cease all Commercial Cannabis Activity until such time that the new owner is issued a new Permit from the Department. The Permittee and all owners of the Premises will be subject to enforcement actions pursuant to Chapter 1.12, Code Compliance, for continuing operations after a Permit has expired without a renewal.

B. A Permit is issued to and covers only the Permittee with respect to the Premises identified on the Permit. The Permit does not run with the land.

18.39.120 Fees

The filing of an initial Application and/or an Application for renewal of a Permit shall be accompanied by payment of such fees as the Town Council may establish to recover the cost of administration and enforcement of this Chapter. Such fees are non-refundable. Applicants and Permittees are responsible for the costs of inspections, investigations, and any other activity required pursuant to this Chapter. All fees and costs specified by this Chapter shall be established by resolution of the Town Council and may be amended from time to time.

18.39.130 Taxes

All Permittees shall comply with any Town-imposed Commercial Cannabis Activity taxes that may be enacted.

18.39.140 Commercial Cannabis Development Criteria and Operating Requirements

A. A maximum of 12 plants may be grown on the Premises for commercial purposes.

B. Residency and Ownership Requirements. Permittee must have his or her primary domicile in the Town of Portola Valley and must own the Premises.

1. If the Premises is owned by one or more individuals, at least one of the individuals must satisfy the residency requirements of this section.

2. If the Premises is not owned by an individual, the residency requirement specified in this section shall be met by the Permittee's chief executive officer, a member of the Permittee's board of directors or a Person with an aggregate ownership interest of 20 percent or more in the Permittee or other individual associated with the Permittee as approved by the Planning and Building Director.

3. The residency and ownership requirements specified in this section shall be maintained during the term of the Permit.

C. Property Setbacks. Commercial Cannabis shall not be grown in the zoning setbacks for the Premises.

D. All Premises shall also be located a minimum of 600 feet from any Sensitive Receptor. The 600 foot distance shall be measured in a straight line from the closest property line

of the residentially designated or otherwise protected site to the closest property line of the parcel with the Cannabis Cultivation.

E. Surveillance and Security. Commercial Cannabis Activity shall comply with security requirements acceptable to the Department on an individual project basis. The security requirements may include provisions for perimeter fencing plan (compliant with Municipal Code Chapter 18.43, Fences), interior and exterior lighting plan, security camera layouts, security team plan, alarm system details, transportation, remote monitoring, electronic track and trace, fire suppression plan, and record keeping.

F. Ventilation. All Premises shall be equipped with odor control filtration and ventilation system(s) to control odors and mold to the reasonable satisfaction of the Planning and Building Director.

G. Inspections. Premises shall be subject to inspections by, without limitation, the Department, the Town of Portola Valley, County of San Mateo, the Woodside Fire Protection District, and any or agency, office or similar department thereof. Agents or employees of such agencies shall have unrestricted access to the Premises, including, without limitation, all rooms, buildings, structures, facilities, and limited access areas, for the purpose of conducting inspections. If a Permittee refuses or interferes with an inspection, the Permittee will be subject to enforcement efforts pursuant to Chapter 1.12, Code Enforcement and the Town may order the immediate cessation of all Commercial Cannabis Activities on the Premises.

H. Display of Permit. The current Permit, State Permit, and an emergency contact phone number shall be maintained on the Premises at all times and shall be immediately accessible upon request of any entity conducting an inspection.

I. No Consumption on Premises. Consumption of Commercial Cannabis shall not be allowed within 100 feet of the commercial Cultivation area. This provision is not intended to prohibit personal use by the owner or occupant of the Premises.

J. Parking Requirements. Adequate on-site parking and delivery drop off and pick up zones shall be provided. No off-site parking shall be used in conjunction with the Commercial Cannabis Activity.

K. Notification to Department. A Permittee shall provide the Department with notice in writing, either by mail or e-mail to the attention of the Planning and Building Director, within 24 hours of the following:

1. A criminal conviction rendered against the Permittee;
2. A civil penalty or judgment rendered against the Permittee;
3. Notice of revocation of a State Permit or other local authorization to conduct Commercial Cannabis Activities;
4. The Permittee becomes aware of, or has reason to suspect, a diversion, theft, loss, or any other criminal activity involving its Commercial Cannabis Activities.

L. Cultivation Types Allowed. The following State Permit types, as defined by California Business and Professions Code Section 26061, will be permitted in the Town, subject to issuance of a Commercial Cannabis Permit:

1. "Specialty Cottage Outdoor" is an outdoor Cultivation site with up to 12 mature plants.
2. "Specialty Cottage Indoor" is an indoor Cultivation site with up to 12 mature plants.
3. "Specialty Cottage Mixed-Light Tier 1 and 2" is a mixed-light Cultivation site with up to 12 mature plants.

M. Number of Permits. The Town may issue up to 5 new permits during the first year of this ordinance. During the second year following the effective date of this ordinance, and each year thereafter, the Town may issue up to five new permits provided that there shall be no more than 10 issued Permits in effect at any one time. There may not be more than one Permit issued per Premises.

N. Building Requirements. All structures used for Cultivation, including greenhouse or similar structures shall comply with all applicable State or local building and design review regulations, zoning, and land use requirements.

O. Fire Code Requirements. A Permittee shall prepare and implement a fire prevention plan, which shall include, at minimum, emergency vehicle access to the Premises vegetation management, and fire break maintenance around all structures. The plan for compliance with this Section shall be proposed at the Application stage and shall not be approved without the concurrence of the Woodside Fire Protection District Fire Marshall.

P. Lighting. All lighting visible from the exterior of the Cultivation area shall comply with the dark sky lighting requirements. Light shall not escape at a level that is visible from neighboring properties or the public right of way.

Q. Runoff and Storm water. Runoff containing sediment or other waste or byproducts, including, without limitation, fertilizers and pesticides, shall not be allowed to drain to the storm drain system, waterways, or adjacent lands, and shall additionally comply with all applicable State and federal regulations. A plan for compliance with this Section shall be proposed at the Application stage and included as a condition of approval.

R. Wastewater Discharge. Permittees shall submit verification of compliance with the Waste Discharge Requirements of the applicable Regional Water Quality Control Board, or waiver thereof. All domestic wastewater shall be disposed of in a permanent sanitary sewer or on-site wastewater treatment system (OWTS) with demonstrated adequate capacity. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, identify the amount of wastewater, excess irrigation, and domestic wastewater anticipated, as well as treatment and disposal facilities.

S. Pest Prevention. All Cannabis and Cannabis Products shall be kept commercially clean in respect to established pests of general distribution so that exposure to such pests is

under effective control. Permittees shall comply with all applicable State and federal pesticide laws and regulations, including, without limitation, those enforced by the State Department of Pesticide Regulation. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, include the product name and active ingredient(s) of all pesticides to be applied to Cannabis during any stage of plant growth and integrated pest management protocols, including chemical, biological, and cultural methods the Permittee anticipates using to control or prevent the introduction of pests on the Cultivation Site.

T. Energy Use. Electrical power, including, without limitation, for illumination, heating, cooling, and ventilation, shall be provided by 100% renewable energy source or on-site zero net energy renewable source. A plan for compliance with this Section shall be proposed at the Application stage.

U. Noise Limits. Noise generated at the Premises shall comply with the Town's Noise Control requirements.

V. Hazardous Materials. No hazardous materials shall be used in conjunction with the Cultivation of cannabis at the Premises.

W. Waste Management. All Cannabis waste must be properly stored and secured to prevent access by the public. All garbage and refuse on the Cultivation Site shall be accumulated or stored in nonabsorbent, water-tight, vector resistant, durable, easily cleanable, galvanized metal or heavy plastic containers with tight fitting lids. No refuse container shall be filled beyond the capacity to completely close the lid. No garbage and refuse generated in conjunction with the Cultivation of cannabis shall be allowed to accumulate for more than seven (7) calendar days, and shall be properly disposed of before the end of the seventh (7th) day. All non-Cannabis waste, including, without limitation, refuse, garbage, green waste, and recyclables, must be disposed of in accordance with Town and State codes, laws and regulations. A plan for compliance with this Section shall be proposed at the Application stage. The plan must address the storing, handling, and disposing of all waste by-products of Cultivation and, at minimum, characterize the anticipated amount and types of waste generated, identify the designated holding area(s) for Cannabis waste, and describe the operational measures that are proposed to manage, track/identify, and dispose of Cannabis waste in compliance with County and State standards.

X. Water Usage. Permittees must identify a water supply source adequate to meet all Cultivation uses on a sustainable basis for the Premises, provide the Department with proposed conservation measures, demonstrate that Permittee is in compliance with all statutes, regulations, and requirements of the State Water Resources Control Board, Division of Water Rights, and allow the Department and/or other County departments access to the Premises to monitor water usage. Domestic water sources must be from a source permitted by the Town. A plan for compliance with this Section shall be proposed at the Application stage.

Y. Insurance Requirements: A Permittee shall maintain insurance in the amounts and of the types that are acceptable to the Town Manager or his or her designee. The Town of Portola Valley shall be named as additional insured on all city-required insurance policies.

Z. Indemnity: To the extent permitted by law, the Applicant shall indemnify, defend and hold harmless the Town, its Town Council, its officers, attorneys, employees and agents (the “indemnified parties”) from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the activity subject of the Cannabis Permit, including (without limitation) reimbursing the Town for its actual attorneys’ fees and costs incurred in defense of the litigation. The Town may, in its sole discretion, elect to defend any such action with attorneys of its own choice.

18.39.150 Record Retention

A. A Permittee shall keep and maintain the following records for at least seven (7) years from the date of permit issuance by the Town:

1. Financial records including, without limitation, bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization, other State of California agencies, the Department, or other County departments;

2. Personnel records, including each employee’s full name, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable;

3. Training records, including, without limitation, the content of the training provided and the names of the employees that received the training;

4. Contracts with other Permittees;

5. Limited-access area logs and copies of current versions of any applicable plans required under this Chapter, including, without limitation, security plan, waste disposal plan, water management plan, water conservation plan, access restriction procedures, record keeping policy, odor and ventilation measures, energy usage plan, fire prevention plan, parking plan, and pest management plan; and

6. State permits, and other local Permits or authorizations to conduct Commercial Cannabis Activity.

B. A Permittee shall provide all books and records for review by the Department or its designee upon request. Records shall be kept in a manner that allows the Department, or its designee, to review the records in either hard copy or electronic form, whichever the Department requests. A Permittee may contract with a third party to provide custodial or management services of the records; however, such a contract shall not relieve the Permittee of its responsibilities under this Chapter.

18.39.160 Track and Trace Program

A. A Permittee must have an established account in a State-approved track and trace system prior to engaging in any Commercial Cannabis Activities. A Permittee may use any track and trace program approved by State agencies and shall comply with all State laws, rules, and regulations relating to track and trace, including, without limitation,

system unique identifier (UID) requirements, user requirements, reporting requirements, and inventory requirements.

B. The Permittee is responsible for the accuracy and completeness of all data and information entered into the track and trace system. Data entered into the track and trace system must be accurate. Inaccuracies, if not corrected, may result in enforcement action against the Permittee.

C. The Permittee shall designate at least one track and trace system administrator who shall complete initial training prior to accessing the system and participate in ongoing training as required by the Department, the State, and/or their respective agents/designees. The designated administrator must maintain an accurate and complete list of any other track and trace system administrators and users and update the list immediately when changes occur.

D. It is a violation of this Chapter for any Person to intentionally misrepresent or falsify information entered into the track and trace system. The Permittee shall monitor all notifications from the track and trace system and resolve all the issues included in the notification in the time frame specified in the notification. A Permittee shall not dismiss a notification from the track and trace system until the Permittee resolves the issues identified in the notification.

18.39.170 Revocation or Suspension of Permit

A. Any of the following shall be grounds for revocation or suspension of a Permit:

1. Failure to comply with the terms and conditions of the Permit.
2. Any act or omission that violates the requirements of this Chapter, the County Code, or State rule, law, or regulation.
3. Any act or omission that results in the denial, revocation, or suspension of the Permittee's State Permit.
4. The Permit was granted on the basis of false material information, written or oral, provided knowingly or negligently by the Permittee.
5. Conduct of Commercial Cannabis Activities in a manner that constitutes a nuisance, where the Permittee has failed to comply with reasonable conditions to abate the nuisance.
6. The Permittee no longer meets the residency requirements of this chapter.

B. Revocation or suspension proceedings shall be conducted in accordance with Chapter 1.12, Code Compliance.

18.39.180 Enforcement and Penalties

A. Any activity in violation of this Chapter is hereby deemed a per se nuisance.

B. As part of any code compliance efforts, any Permittee found to be in violation of this Chapter shall be assessed in addition to the cost of code compliance a penalty in the amount of three times (3x) the amount of the Permit fee.

C. The remedies in this Chapter are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided in this Chapter are cumulative and not exclusive.

18.39.190 Implementing Regulations

The Planning Commission shall have the authority to adopt regulations implementing this Chapter.

2. AMENDMENT OF CODE. Subsection Q is hereby added to Section 8.12.010 [Definition of nuisance] of Chapter 8.12 [Nuisance Abatement] of Title 8 [Health & Safety] is amended to read as follows:

“Q. A Commercial Cannabis Activity emitting odors that are detectible off site.”

3. ANNUAL REVIEW. For five years following adoption of this Ordinance, the Planning Commission shall conduct an annual review of this Ordinance. This annual review shall include the number of applications received, the number of permits issued, the number of complaints received and an assessment of whether modifications to the ordinance are required. Following the first annual review, in the Council’s reasonable discretion, the Council may direct the Planning Commission to extend the time periods for the review or to eliminate such review altogether.

4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The Town Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act (“CEQA”) because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

5. SEVERABILITY. If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or the applicability of this ordinance to other situations.

6. EFFECTIVE DATE AND POSTING. This ordinance shall become effective 30 days after the date of its adoption and shall be posted within the Town in three public places.

INTRODUCTED: March 28, 2018

PASSED: April 25, 2018

AYES: Councilmembers Hughes, Derwin and Aalfs


NOES: Vice Mayor Wengert and Mayor Richards

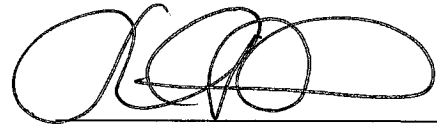
ABSTENTIONS: None

ABSENT: None

ATTEST None

APPROVED


Town Clerk


Mayor

APPROVED AS TO FORM


Town Attorney