



# **A G E N D A**

## **CITY OF LAKEPORT PLANNING COMMISSION**

### **Wednesday, November 10, 2021**

In accordance with updated guidelines from the State of California and revised Cal OSHA Emergency Temporary Standards, persons that are NOT fully vaccinated for COVID-19 are required to wear a face covering at this meeting.

Pursuant to Assembly Bill 361, signed by Governor Newsom on September 16, 2021, the regular meeting of the Planning Commission for November 10, 2021, will be conducted both in person, and telephonically through Zoom.

**If you cannot attend in person, and would like to speak on an agenda item, you can access the Zoom meeting remotely:**

Please click the link below to join the webinar:

<https://zoom.us/j/98661665155>

Or iPhone one-tap:

US: +1669 900 9128, 98661665155# or +13462487799, 98661665155#

**Or Join by Telephone:**

Dial (for higher quality, dial a number based on your current location):

US: [+16699009128](tel:+16699009128), [98661665155#](tel:+16699009128) or [+13462487799](tel:+13462487799), [98661665155#](tel:+13462487799)

Meeting ID: 986 6166 5155

International numbers available: <https://zoom.us/j/98661665155>

The City wants you to know that you can also submit your comments by email to [virtualhost@cityoflakeport.com](mailto:virtualhost@cityoflakeport.com).

To give the City Clerk adequate time to print out your comments for consideration at the meeting, please submit your written comments prior to 4:30 p.m.

Please indicate in the email Subject Line "FOR PUBLIC COMMENT" and list the item number you wish to comment on.

Comments that you want read to the Council will be subject to the three-minute time limitation (approximately 350 words). Written comments that are only to be provided to Council and not read at the meeting will be distributed to the Council prior to the meeting.

The City of Lakeport thanks you in advance for taking all precautions to prevent spreading the COVID-19 virus.



# **A G E N D A**

## **CITY OF LAKEPORT**

### **PLANNING COMMISSION**

**REGULAR MEETING: Wednesday, November 10, 2021 5:30 P.M.**  
**City Hall Council Chambers, 225 Park Street**

- I. **CALL MEETING TO ORDER:** 5:30 p.m.
- II. **ROLL CALL:**
- III. **ACCEPTANCE OF AGENDA:**

**Urgency Items:** To add an item, the Commission is required to make a majority decision that an urgency exists (as defined in the Brown Act) and a two-thirds determination that the need to take action arose subsequent to the Agenda being posted.

Move to accept the agenda as posted or move to add or delete items.
- IV. **COMMUNICATIONS:**
  - A. **Public Input:**

Any person may speak for three minutes about any subject within the authority of the Planning Commission, provided that the subject is not already on tonight's agenda. Persons wishing to address the Planning Commission are required to complete a Citizen's Input form and submit it to the Community Development Director prior to the meeting being called to order. While not required, please state your name and address for the record.
- V. **CONSENT CALENDAR:**

The following Consent Agenda items are expected to be routine and non-controversial. They will be acted upon by the Commission at one time without any discussion. Any Planning Commissioner may request that any item be removed from the Consent Agenda for discussion under the Regular Agenda.

  - A. **Minutes:**

Approval of the completed minutes from the Regular Planning Commission meeting of October 13, 2021.
- VI. **REGULAR CALENDAR:**
  - A. **City of Lakeport - Application #2021-33 –**

The Planning Commission will consider a minute order to amend the Municipal Code for compliance with SB 1383 which requires jurisdictions to adopt specific sections of CALGreen as well as adoption of the Model Water Landscape Ordinance.
  - B. **City of Lakeport – Discussion Cannabis Ordinance**

Staff seeking direction regarding the Cannabis Ordinance #915.

**VII. Correspondence**

**VIII. Comments from Staff  
or Commissioners:**

**IV. SCHEDULE NEXT MEETING:** Discuss and set the next meeting date (December 8, 2021).

**X. ADJOURNMENT:**

**APPEALS:**

The applicant or affected persons not satisfied with the decision of the Planning Commission may file an appeal. Affected persons include individuals who received notice of a land use application, or who attended the Planning Commission meeting and made verbal comments or submitted written comments in response to the notice. An appeal of a decision made by the Planning Commission shall be filed with the Community Development Director within five business days of the decision. Said appeal shall be filed on the prescribed form and accompanied by the fee in the amount set by Resolution of the City Council.

**ACCESSIBILITY:**

The City of Lakeport, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access, attend and/or participate in the City meeting due to disability, to please contact City Clerk's Office, (707) 263-5615, 72 hours prior to the scheduled meeting to ensure reasonable accommodations are provided.



## CITY OF LAKEPORT PLANNING COMMISSION REGULAR MEETING – October 13, 2021 MINUTES

**CALL TO ORDER / ROLL CALL:** Chair Mitchell called the meeting to order at 5:30 p.m. with Commissioners Maxman, Warrenburg, Barnett, and Combs present. Also present was Community Development Director, Jenni Byers, and Administrative Analyst, Linda Sobieraj.

### **ACCEPTANCE OF AGENDA:**

Commissioner Warrenburg made a motion to accept the agenda as posted. Seconded by Commissioner Barnett. Motion carried by voice vote. (5-0)

**COMMUNICATIONS:** Director Byers advised there was no public input.

### **CONCENT CALENDAR:**

A motion was made by Commissioner Maxman, to accept the minutes. Seconded by Commissioner Combs. (Minutes from the Special Planning Commission September 8, 2021). Motion carried by voice vote (5-0).

### **REGULAR AGENDA:**

#### **Santana's Cottage Café – Application #2021-28 – Architectural and Design Review and Categorical Exemption**

Director Byers briefed the Commission on an Application for an Architectural and Design Review and Categorical Exemption to allow for a 540 square foot patio cover to be located at 1090 N Main Street (APN 026-291-03).

Public hearing opened at 5:40 p.m. Applicant Bob Santana spoke regarding the project answering questions regarding maintenance of the awning. Public hearing closed at 5:44 p.m.

#### Categorical exemption Approval

Commissioner Warrenburg moved that the Planning Commission find that Application #2021-28 as applied for by Santana's Cottage Cafe is categorically exempt pursuant to Section 15303(c) of the CEQA Guidelines. Seconded by Commissioner Combs and carried by voice vote (5-0).

#### Architectural and Design Review Approval

Commissioner Warrenburg moved that the Planning Commission find that the Architectural and Design Review applied for by Santana's Cottage Cafe on property located at 1090 North Main Street does meet the requirements of Section 17.27.080 of the Lakeport Zoning Ordinance; consistent with the objectives and policies of the Lakeport General Plan; and subject to the project conditions of approval (Attachment B), and with the findings listed in the October 13, 2021 staff report. Seconded by Commissioner Combs and carried by voice vote (5-0).

### **CORRESPONDENCE:**

The Commission discussed the current project pending list.

### **COMMENTS FROM STAFF AND COMMISSIONERS:**

Commissioner Maxman advised the League of Cities has a monthly planning business meeting and he found out that the Legislature extended the deadline into 2024 for the guidelines for parklets.

Commissioner Combs advised he has been walking around downtown and found it was not as robust as he thought it was. Commissioner Combs suggested encouraging more retail businesses in the downtown area.

Director Byers advised Retail Coach is putting on two upcoming seminars on October 26<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup>. One is downtown retail opportunities, where the parklets will be discussed and the second meeting they will be discussing franchisee opportunities and finance opportunities.

Director Byers stated the League of Cities Planning Commissioner training was coming up and will be live in San Ramon March 16<sup>th</sup> – 18<sup>th</sup> of 2022 and the city will be sending two Planning Commissioners.

Director Byers advised previously, staff had adopted the Model Water Efficiency Landscaping Ordinance as part of the 2019 Cal Green Building Code and with new state requirements will be brought before the Planning Commission for review at the November meeting.

Director Byers stated as part of the City Council goals, staff will be bringing the cannabis ordinance for discussion at a future meeting.

Director Byers advised the Planning Commissioners that staff would be meeting with the county the Board of Supervisors to discuss their draft version of the Mirco Enterprise Home Kitchen Ordinance. Staff will be bringing the document back for review to the Planning Commission at a future date.

**DISCUSS AND SET THE NEXT MEETING DATE:**

It was agreed by consensus that the next meeting be held on Wednesday, November 10, 2021. Meeting was adjourned and closed at 5:59 p.m.

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Jennifer M. Byers, Community Development Director



## CITY OF LAKEPORT PLANNING COMMISSION

### STAFF REPORT

**RE:** 2021-33 / Draft Text Amendment to Lakeport Municipal Code for compliance with Senate Bill 1383

**MEETING DATE:** November 10, 2021

**SUBMITTED BY:** Jennifer M. Byers, Community Development Director

**PURPOSE OF REPORT:** ☐ Information only ☒ Discussion ☒ Commission Action

#### WHAT IS BEING ASKED OF THE PLANNING COMMISSION:

The Planning Commission is requested to consider amending the Lakeport Municipal Code for compliance with Senate Bill 1383. There are two draft ordinances for discussion: 1. Recycling of Construction and Demolition Debris and 2. Water Efficient Landscaping.

Senate Bill 1383 Regulations (14 CCR Section 18989.1) requires that jurisdictions adopt an ordinance or other enforceable requirement that requires the recycling and/or salvage or at least 65% of nonhazardous Construction & Demolition (C&D) materials for residential and nonresidential projects in accordance with the California Green Building Standards Code, 24 CCR, Part 11 as amended July 1, 2019 and effective January 1, 2020.

Senate Bill 1383 Regulations (14 CCR Section 18989.2) require that jurisdictions adopt an ordinance or other enforceable requirement that requires compliance with Sections 492.6(a)(3)(B) (C) (D), and (G) of the Model Water Efficient Landscaping Ordinance (MWEL) as amended September 15, 2015.

These draft ordinances will amend the Lakeport Municipal Code to ensure that the City of Lakeport complies with CalGreen requirements and applicable law related to diversion of C&D materials, as specified in SB 1383 and the State Department of Water Resources requirements and applicable law related to water efficient landscaping requirements.

**BACKGROUND/ANALYSIS:** In September 2016, Governor Brown signed into law SB 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of California's economy. SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025.

#### Construction Waste Diversion

One requirement resulting from SB 1383 is that jurisdictions adopt an ordinance or other enforceable requirement that requires compliance with CalGreen requirements.

CalGreen requires that certain construction and demolition projects divert at least 65% of construction and demolition debris generated from the project or other amount established by State law by using recycling, reuse, and diversion programs. Applicants for any project must submit a properly completed waste reduction plan, identifying all waste materials expected to be generated as a result of the project at the time of demolition or building permit application.

The City has adopted by reference the 2019 CalGreen Code under Chapter 15.04 of the Municipal Code. SB 1383 additionally requires jurisdictions to adopt a C&D Ordinance that requires waste diversion, as well as requires contractors and subcontractors to provide a waste reduction plan. The attached ordinance would comply with current CalGreen requirements. Specifically, the ordinance would create Lakeport Municipal Code Chapter 15.32 to:

- Require waste diversion of 65%, pursuant to the current version of the California Green Buildings Standards Code.
- Require submittal of a waste reduction plan containing the required information (project square footage, estimated weight of project debris, diversion facilities where the debris will be taken, etc.).
- Require subcontractors to comply with the ordinance.
- For commercial projects involving additions and alterations, verify that Universal Waste items (e.g., fluorescent lamps) are properly disposed of and diverted from the landfills.
- Establish penalties.

Under Public Resources Code Section 41850, the California Integrated Waste Management Board may impose administrative civil penalties upon the city of up to ten thousand dollars per day for failure to make a good faith effort to implement a reduction and recycling element as mandated by Section 41000 of the Public Resources Code.

### **Model Water Efficient Landscape Ordinance**

One requirement resulting from SB 1383 is that jurisdictions adopt an ordinance or other enforceable requirement that requires compliance with the current MWELO requirements set by the State Department of Water Resources. SB 1383 requires applicable landscaping projects to meet water efficient landscaping requirements for soil preparation, mulch and amendments. A landscape design plan must meet the following criteria for soil preparation, mulch and amendments:

- Soil amendments shall be incorporated according to recommendations of the soil report and what is appropriate for the plants selected.
- For landscape installations, compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six inches into the soil. Soils with greater than 6% organic matter in the top six inches of soil are exempt from adding compost and tilling.
- A minimum three-inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife, up to 5% of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.

- Organic mulch materials made from recycled or post-consumer shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available. Organic mulches are not required where prohibited by local Fuel Modification Plan Guidelines or other applicable local ordinances.

The attached ordinance amends the Lakeport Municipal Code to comply with both current State MWELD requirements and the SB 1383 Regulations. Specifically, the ordinance adds language to Lakeport Municipal Code Chapter 17.28.010 FF to:

- ✓ Apply provisions to new construction projects with an aggregate landscape area of greater than or equal to 500 square feet requiring a building or landscape permit, plan check or design review (changed from 250 square feet).
- ✓ Apply provisions to rehabilitated landscape projects with an aggregate landscape area of greater than or equal to 2,500 square feet requiring a building or landscape permit, plan check or design review (changed from 5,000 square feet).

The attached ordinance also provides that all landscaping in the City shall comply with State Model Water Efficient Landscape Ordinance (23 California Code of Regulations, Section 490 et seq.), as may be amended, if applicable.

#### **ENVIRONMENTAL REVIEW:**

Introduction of the ordinance is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is administrative and does not directly impact the environment.

#### **NEXT STEPS:**

If approved, Staff plans to take the Planning Commission's recommendation to the City Council for their consideration at the December 7, 2021 meeting.

#### **SUGGESTED MOTIONS:**

##### CEQA Exemption

I move that the Planning Commission find that Text Amendment 2021-33, pertaining to the amendment of the Lakeport Municipal Code, has been determined to be exempt from the California Environmental Quality Act as it meets the criteria established in Section 15061(b)(3) and 15378(b)(4) of the CEQA Guidelines because there will be no physical changes to the environment and requires no further review pursuant to Section 15168(c)(2).

##### Text Amendment to the Municipal Code Recommendation to the City Council

I move that the Planning Commission forward a recommendation to the City Council to take the following action:



Adopt two Ordinances that modify language in the Lakeport Municipal Code relating to 1) the Recycling of Construction and Demolition Debris and 2) Water Efficient Landscape regulations.

☒ **Attachments:**

1. Draft Ordinance Recycling of Construction and Demolition Debris
2. Draft Ordinance Model Water Landscaping

## **ORDINANCE NO. XX (2021)**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER 15.32 OF THE LAKEPORT MUNICIPAL CODE REGARDING THE RECYCLING OF CONSTRUCTION AND DEMOLITION DEBRIS**

**WHEREAS**, the City of Lakeport presently promotes the recycling of construction and demolition debris through implementation of the California Green Building Standards Code, adopted by reference in Chapter 15.04 of the Lakeport Municipal Code; and

**WHEREAS**, the California Department of Resources Recycling and Recovery (“CalRecycle”) promulgated regulations to implement Senate Bill 1383 (“SB 1383 Regulations”); and

**WHEREAS**, the SB 1383 Regulations require that the City of Lakeport adopt an ordinance or other enforceable requirement that requires diversion of a minimum of 65%, by weight, construction and demolition debris, from landfills; and

**WHEREAS**, the City Council desires to add Chapter 15.32 to the Lakeport Municipal Code to formally adopt waste diversion requirements for construction and demolition debris to comply with the current version of the California Green Buildings Standards Code.

**NOW, THEREFORE**, the City Council of the City of Lakeport does ordain as follows:

**SECTION 1.** Title 15 of the Lakeport Municipal Code is hereby adopted to read as follows:

#### **Chapter 32— Recycling of Construction and Demolition Debris**

##### **15.32.010 - Purpose.**

The California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 through 49620), created by AB 939 (chaptered as 1095) of the 1989 Legislative Session, declares that "the amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program."

The purpose of this chapter is to is to promote the recycling of construction and demolition debris in order to protect the public health, safety, and welfare, and to meet the City’s obligations under AB 939 and the current version of the California Green Buildings Standards Code.

##### **15.32.020 - Diversion requirements.**

A. Applicants must divert from landfills a minimum of 65%, by weight, construction and demolition debris generated from the project or other amount established by State law, whichever is higher, by using recycling, reuse, and diversion programs.

B. Applicants must also comply with California Green Building Standards Code in accordance with Chapter 15.04.

**15.32.020 - Waste reduction plan.**

A. Applicants for any project must submit a properly completed waste reduction plan, identifying all waste materials expected to be generated as a result of the project at the time of demolition or building permit application. No building or demolition permit shall be issued until the applicant has submitted a waste reduction plan in the form required by the building official and until the waste reduction plan has been approved by the building official or designee.

B. The waste reduction plan must contain, at a minimum, the following:

1. The type of project;
2. The total square footage of the project;
3. The estimated weight of project construction and demolition debris to be generated by material type;
4. The construction and demolition debris materials that will be diverted from disposal by recycling, reuse on the project or salvage for future use or sale;
5. If construction and demolition debris will be sorted on-site (source-separated) or bulk mixed (single stream);
6. Diversion facilities where the construction and demolition debris will be taken;
7. Construction methods taken to reduce the amount of construction and demolition debris generated; and,
8. The amount of construction and demolition debris diverted by weight.

C. Every person or entity to whom a building or demolition permit has been issued ("permittee") shall comply, and require their subcontractors to comply, with the provisions of the approved waste reduction plan applicable to the permit.

D. If the permittee subsequently wishes to amend the approved waste reduction plan, the permittee shall submit the request in writing to the building official. The building official or their designee shall approve or deny the requested amendment, as submitted or as modified by the building official or their designee, as appropriate.

E. The permittee shall collect and retain (1) weight tickets, (2) an inventory of reused items, (3) receipts and other records from all recipients of discarded material that demonstrate the reuse, recycling, and disposal of all material generated by and hauled from the project, and (4) such other documentation as necessary to establish compliance with the approved waste reduction plan.

F. The permittee shall, for commercial projects involving additions and alterations, verify that Universal Waste items, including fluorescent lamps and ballast and mercury containing thermostats are properly disposed of and diverted from the landfills. "Universal Waste" means batteries, electronic devices, mercury-containing equipment, lamps, cathode ray tubes or glass, and aerosol cans. A list of prohibited Universal Waste materials shall be included in the construction documents.

G. Prior to final inspection of the project or as otherwise required by the waste reduction plan, the permittee shall complete and submit to the building official a diversion summary sheet and the documentation described in subsection E of this section.

**15.32.030 - Payment of monitoring costs.**

Any person or entity which has previously failed to comply with an approved waste reduction plan or with the other provisions of the ordinance codified in this chapter may, at the time of submitting any subsequent waste reduction plan for approval, be required to pay a monitoring fee in the amount set from time to time by resolution of the city council to cover the costs of monitoring compliance with the approved waste reduction plan. The decision as to whether the facts warrant the imposition of the monitoring fee shall be made by the building official.

**15.32.040 - Penalties.**

Violation of any provision of this chapter, including, but not limited to,

- A. Demolition or construction before having or without having an approved waste reduction plan;
- B. Failure to comply with the approved waste reduction plan (as amended, if applicable);
- C. Failure to provide all required documentation prior to final inspection or as required by the waste reduction plan shall subject the violator to a penalty of up to ten times the permit fee for the building or demolition permit, as determined by the building official, as set forth in Sections 15.04.040 of this code.

**SECTION 2. Severability:** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 3. CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 4. Effective Date.** This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

**SECTION 5. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

## **ORDINANCE NO. XX (2021)**

### **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER 17.28.010 FF, AND AMENDING CHAPTER 17.037.020 OF THE LAKEPORT MUNICIPAL CODE RELATING TO WATER EFFICIENT LANDSCAPE REGULATIONS**

**WHEREAS**, the City of Lakeport imposes water efficient landscape requirements on all new and rehabilitated landscaping projects that require a permit, pursuant Chapter 15.04. of the Lakeport Municipal Code; and;

**WHEREAS**, the Water Conservation in Landscaping Act (Government Code Section 65591 et seq.) (the “Act”) was enacted for the purpose of reducing the waste of water associated with irrigation of outdoor landscaping; and

**WHEREAS**, the Act requires the State Department of Water Resources (“DWR”) to draft a model water efficient landscape ordinance (“MWELo”) (Cal. Code Regs., tit. 23, § 490 et seq.), and further required cities and counties, by January 1, 2010, to adopt the MWELo, or a locally modified ordinance at least as effective in conserving water as the MWELo, or else the state MWELo applies by default (Gov. Code, § 65595); and

**WHEREAS**, on April 1, 2015, Governor Brown signed Executive Order B 29-15, which directed the DWR to update the MWELo; and

**WHEREAS**, the DWR updated the MWELo on September 15, 2015; and

**WHEREAS**, the City intends to comply with the current MWELo and this Water Efficient Landscape Ordinance is intended to locally implement the Act.

**NOW, THEREFORE**, the City Council of the City of Lakeport does ordain as follows:

**SECTION 1.** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2.** Chapter 17.28.010 FF of Title 17 of the Lakeport Municipal Code is hereby added to read as follows:

FF. Water Efficient Landscaping Requirements

1. Property owners or their building or landscape designers, including anyone requiring a building or planning permit, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the State of California Model Water Efficient Landscape Ordinance “MWELo”, including sections related to use of Compost and mulch as delineated in this Section.

2. The following Compost and mulch use requirements that are part of the MWELO are now also included as requirements of this ordinance. Other requirements of the MWELO are in effect and can be found in 23 CCR, Division 2, Chapter 2.7.
3. Property owners or their building or landscape designers that meet the threshold for MWELO compliance outlined in Section 14(a) above shall:
  - a. Comply with Sections 492.6 (a)(3)(B)(C),(D) and (G) of the MWELO, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:
    - i. For landscape installations, Compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding Compost and tilling.
    - ii. For landscape installations, a minimum three- (3-) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.
    - iii. Organic mulch materials made from recycled or post-consumer materials shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinances.
  - b. The MWELO compliance items listed in this Section are not an inclusive list of MWELO requirements; therefore, property owners or their building or landscape designers that meet the threshold for MWELO compliance outlined in Section 14(a) shall consult the full MWELO for all requirements.
4. If, after the adoption of this ordinance, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELO September 15, 2015 requirements in a manner that requires the city to incorporate the requirements of an updated MWELO in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

**SECTION 3. Section 17.37.020 Definitions of Title 17 of the Lakeport Municipal Code is hereby added as follows:**

“Model Water Efficient Landscape Ordinance “MWELO” - refers to the State of California’s Model Water Efficient Landscape Ordinance (MWELO), 23 CCR, Division 2, Chapter 2.7.”

**SECTION 4. Severability:** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 5. CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 6. Effective Date.** This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

**SECTION 7. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.



## CITY OF LAKEPORT PLANNING COMMISSION

### STAFF REPORT

**RE:** Discussion on Amending Chapters of the Lakeport Municipal Code regarding Commercial Cannabis

**MEETING DATE:** November 10, 2021

**SUBMITTED BY:** Jennifer M. Byers, Community Development Director

**PURPOSE OF REPORT:** ☐ Information only ☒ Discussion ☒ Commission Action

#### WHAT IS BEING ASKED OF THE PLANNING COMMISSION:

Discuss and review possible amendments to the Lakeport Municipal Code Chapters 5.34, 17.08, 17.10, 17.11 and 17.13. Amendments under consideration reflect state regulations and rulemaking actions by the California Department of Cannabis Control (CDCC).

**BACKGROUND:** In January of 2018, in response to the adoption of AUMA and MAUCRSA, commonly referred to as Proposition 64 and SB 94 respectfully, the City of Lakeport adopted Ordinance 915 adding Chapter 5.34 and amending Chapters 17.08, 17.10, 17.11 and 17.13 of the Lakeport Municipal Code.

Under SB 94, the State developed a regulatory structure for licensing the various uses associated with commercial cannabis. Local jurisdictions are allowed to pass their own regulations providing additional elements of local control. However, in accordance with SB 94 these local regulations were required to be in place by January 1, 2018. The City of Lakeport formed a Cannabis Working Group to draft an ordinance for the possible permitting and regulating of commercial cannabis activities. The Lakeport Planning Commission over the course of several public meetings reviewed and amended this draft Ordinance and on November 8, 2017, made a formal recommendation to the City Council to consider its adoption. The Lakeport City Council discussed the proposed ordinance at several public meetings in November and December 2017 before its final adoption. At those meetings it was agreed upon that while the statutory requirement for adoption was imminent, the ordinance would likely need amendments at a future date.

**DISCUSSION:** Since early 2018 the California Department of Cannabis Control (CDCC) has completed several rulemaking actions. A thorough review of these changes could result in necessary updates to Chapter 5.34, 17.08, 17.10, 17.11 and 17.13 of the Lakeport Municipal Code.



Additionally, a topic of significant discussion relating to amendments to this code are those aspects related to the retail sale of cannabis in Lakeport. As adopted, Chapter 5.34 includes the following list of highlighted policies relating to retail:

- Prohibited cannabis retail uses which include onsite consumption
- Prohibited cannabis related special events
- Limited cannabis retailer activities to delivery only

If the decision to direct staff to investigate ordinance changes related to retail cannabis is made, it is important to note the Council has vast authority in deciding what the retail sale of cannabis in Lakeport looks like. Important consideration could include:

- Limit number of retailers
- Prohibit retail cannabis in certain zoning districts

**OPTIONS:**

1. Direct staff to investigate necessary regulatory updates and propose amendments.
2. Direct staff to investigate ordinance updates regarding retail cannabis and propose amendments.
3. Direct staff to investigate ordinance updates regarding retail cannabis, investigate necessary regulatory updates and propose amendments.
4. Direct staff to leave Chapter 5.34 as adopted.
5. Provide alternative direction to staff.

**SUGGESTED MOTION:**

Move to initiate through a minute order of the Planning Commission the preparation of amendments to Chapter 5.34, 17.08, 17.10, 17.11 and 17.13 of the Municipal Code to include appropriate modifications to the Cannabis ordinance.

**ATTACHMENT:** Ordinance No. 915

## **ORDINANCE NO. 915 (2018)**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER 5.34 AND AMENDING CHAPTERS 17.08, 17.10, 17.11 AND 17.13 OF THE LAKEPORT MUNICIPAL CODE, REGARDING COMMERCIAL CANNABIS**

**WHEREAS**, the Federal Controlled Substances Act, 21 U.S.C. Section 801 et seq., classifies cannabis as a Schedule 1 Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess cannabis, whether for medicinal or recreations purposes; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act (Health and Safety Code Section 11362.5), which was intended to enable persons who are in need of cannabis for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes; and

**WHEREAS**, SB 420, the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.), was enacted in 2004 to expand and clarify the scope of Proposition 215, the Compassionate Use Act; and

**WHEREAS**, in 2015, the State enacted the Medical Marijuana Regulation and Safety Act (SB 643, AB 266, and AB 243) commonly referred to as MMRSA, instituting a comprehensive state-level licensure and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis. Although MMRSA developed a state-level licensure and regulatory scheme it provided cities and counties the ability to retain local regulator authority over medical cannabis; and

**WHEREAS**, the Governor signed SB 837 in June of 2016, changing references to the term “marijuana” in MMRSA to “cannabis” and renaming MMRSA the “Medical Cannabis Regulation and Safety Act” (MCRSA); and

**WHEREAS**, on November 8, 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was enacted by the voters to decriminalize and regulate commercial and non-commercial recreations cannabis. AUMA provides that cities and counties retain local regulatory control over commercial recreational cannabis; and

**WHEREAS**, the Governor signed SB 94 in June of 2017 (Medicinal and Adult-Use Cannabis Regulation and Safety Act or MAUCRSA) and subsequently AB 133 in September 2017 applying minor technical fixes to MAUCRSA, which amended Section 11362.2 of the California Health and Safety Code and allows cities and counties to enact

and enforce reasonable regulations to reasonably regulate the cultivation, harvest, drying, processing, transportation, purchase, possession, smoking, ingesting, obtaining and giving away cannabis, including concentrated cannabis and cannabis products; and

**WHEREAS**, in response to AUMA and MAUCRSA, the Planning Commission, directed City staff through a minute order on September 20, 2017 to bring forward an ordinance amending the Lakeport Municipal Code to permit and regulate commercial cannabis; and

**WHEREAS**, the City of Lakeport Municipal Code establishes rules and regulations for living and doing business within city limits; and

**WHEREAS**, the unregulated operations of commercial cannabis businesses in the city limits of Lakeport can adversely affect the health, safety, and well-being of the City, its residents and environment. The development of regulations for commercial cannabis operations, including zoning regulation, is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated commercial cannabis operations; and

**WHEREAS**, the ability to operate a commercial cannabis business as conferred by AUMA and MAUCRSA does not confer the right to create or maintain a public nuisance, the City intends to minimize the risks and complaints regarding fire, odor, crime and pollution caused or threatened by the unregulated operation of commercial cannabis operations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOW:**

**SECTION 1.** Chapter 5.34 of Title 5 of the Lakeport Municipal Code is hereby adopted to read as follows:

**Title 5—Business Taxes, Licenses and Regulations**

**Chapter 34—Commercial Cannabis**

**5.34.01 Purpose and Intent**

The purpose of these regulations is to ensure that the development of commercial cannabis does not adversely impact adjacent parcels or the surrounding neighborhood and that they are developed in a manner which protects the health, safety, and general welfare of the residents, landowners, and businesses in the city. These regulations shall apply to all commercial cannabis activities in the city.

**5.34.02 Definitions**

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or be discovered, or developed, whether growing or not, including but not limited to 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. Any reference to cannabis or cannabis products shall include medical and nonmedical cannabis and medical and nonmedical cannabis products unless otherwise specified. "Cannabis" does not mean industrial hemp as defined by Health and Safety Code section 11018.5, as may be amended from time to time.
- B. "Cannabis business owner" means any of the following:
1. Each person or entity having an ownership interest in the commercial cannabis business other than a security interest, lien, or encumbrance on property that will be used by the commercial cannabis business;
  2. If the commercial cannabis business is a publicly traded company, the chief executive officer or any person or entity with an aggregate ownership interest of five percent (5%) or more; or
  3. Each person who participates in the direction, control, or management of, or has a financial interest in, the commercial cannabis business.
- C. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, processing, or trimming of cannabis, including cannabis nurseries.
- D. "Cannabis retailer" means a facility, whether fixed or mobile, operated in accordance with state and local laws and regulations, where cannabis and/or cannabis products are offered for retail sale, including a facility that delivers cannabis and/or cannabis products as part of a retail sale.
- E. "Cannabis distribution" means a facility where a person conducts the business of procuring cannabis from licensed cultivators or manufacturers for sale to licensed cannabis retailers, and the inspection, quality assurance, batch testing by a Type 8 licensee, storage, labeling, packaging and other processes, prior to transport to licensed cannabis retailers. This facility requires a Type 11 license pursuant to MAUCRSA or a state cannabis license type subsequently established.
- F. "Cannabis manufacturing" means a facility that produces, prepares, propagates, or compounds manufactured cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a state licensee for these activities.
- G. "Cannabis microbusiness" means a facility that cultivates less than 10,000 square feet of cannabis and acts as a licensed distributor, Level 1 manufacturer, and cannabis retailer and excludes cannabis testing. This facility requires a Type 12

license pursuant to MAUCRSA, or a state cannabis license type subsequently established.

- H. “Cannabis nursery” means a state licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- I. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- J. “Cannabis testing service” or “cannabis testing laboratory” means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products, including the equipment provided by such laboratory, facility, or entity.
- K. “City manager” means the city manager or the city manager’s designee, if any.
- L. “Commercial cannabis activities” means any commercial cannabis activity licensed pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), including but not limited to, cultivation, possession, distribution, laboratory testing, labeling, retail, delivery, sale or manufacturing of cannabis or cannabis products.
- M. “Medical cannabis” or “medicinal cannabis” means cannabis that is intended to be used for medical cannabis purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program Act (Health and Safety Code section 11362.7 et seq.), the Medical Cannabis Regulation and Safety Act (“MCRSA,” Business and Professions Code section 19300 et seq.), and MAUCRSA.
- N. “Primary caregiver” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as the same may be amended from time to time.
- O. “Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as the same may be amended from time to time.

#### **5.34.03 Permit Requirement**

No cannabis business may engage in any commercial cannabis activity in the city without obtaining the appropriate permit to operate within the city. The permit is specific to the location where the commercial cannabis activity will occur. Multiple operating locations for the same cannabis business will require separate permits as outlined in sections 5.34.08 and 5.34.09.

#### **5.34.04 Permit Applications**

- A. Applications for a commercial cannabis permit and other matters pertaining to this chapter shall be filed with the city manager on an official city application form.

- B. The application shall be filed with all required fees, deposits, information, and materials as specified by this chapter.
- C. The application shall be signed by each cannabis business owner under penalty of perjury, certifying that the information submitted, including all supporting documents, is, to the best of the applicant's knowledge and belief, true, accurate and complete, and by the property owner for purposes of certifying that s/he has reviewed the application, and approves the use of the property for the purposes stated in the application. The signature of both the cannabis business owner and the property owner shall constitute evidence of their express consent to allow any city official or employee to enter upon and inspect the premises upon reasonable notice.
- D. The information required by this section shall be confidential, and shall not be subject to public inspection or disclosure except as may be required by Federal, State or local law. Disclosure of information pursuant to this section shall not be deemed a waiver of confidentiality by the applicant or any individual named in the application. The city shall incur no liability for the inadvertent or negligent disclosure of such information.
- E. Permit applicants are encouraged to contact the city manager before submitting an application to verify materials necessary for completing an application.

#### **5.34.05 Application Review, Appeal, and Suspension**

- A. Review of Application. The city manager shall consider the application, and the results from any investigation into the application, as deemed necessary by the police chief.
- B. Disapproval of Application. If the city manager disapproves an application, he or she shall notify the applicant in writing, stating the reasons for the disapproval. Notification of disapproval shall be deemed complete upon deposit by first class mail to the applicant to the address indicated on the application. No permit shall be issued unless a successful appeal of the disapproval is made within the requisite time frame.
- C. Appeal of Disapproval.
  - 1. Within ten (10) days after the city manager serves notice of disapproval, an applicant may appeal the disapproval by notifying the city clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
  - 2. The city clerk shall set a hearing on the appeal and shall fix a date and time certain, within thirty (30) days after the receipt of the applicant's appeal, unless the city and the applicant agree to a longer time, to consider the appeal. In no case will a hearing be continued for more than ninety (90) days from receipt of applicant's appeal. The city clerk shall

provide notice of the date, time and place of hearing, at least seven (7) days prior to the date of the hearing.

3. The city council shall hear the applicant's appeal, determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant and the city manager shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, the technical rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
  4. An appellant's failure to attend a hearing shall constitute an abandonment of the appeal and a failure to exhaust administrative remedies.
  5. The city council shall issue or cause to be issued a written decision within twenty-one (21) days after the close of the hearing. The decision of the city council shall be final.
  6. An appellant may seek judicial review of the city council's decision by filing a petition for review with the superior court, pursuant to Code of Civil Procedure sections 1094.5 and 1094.6, within ninety days after the effective date of the city council's notice of decision.
- D. Grounds for Denial, Revocation or Suspension of Permit. The granting of a permit or a renewal thereof may be denied and an existing permit revoked or suspended if:
1. The cannabis business owner has knowingly made a false statement in the application or in any reports or other documents furnished to the city.
  2. The cannabis business owner has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the cannabis business for which the application is made, which includes but is not limited to:
    - i. A violent felony conviction, as specified in Penal Code section 667.5(c).
    - ii. A serious felony conviction, as specified in Penal Code section 1192.7.
    - iii. A felony conviction involving fraud, deceit or embezzlement.
    - iv. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling any controlled substance to a minor; or selling, offering

to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

- v. A felony conviction for drug trafficking with an enhancement pursuant to Health and Safety Code sections 11370.4 or 11379.8.
- 3. The cannabis business or a cannabis business owner has been sanctioned by a licensing authority or other city or county for unauthorized commercial cannabis activity.
- 4. The granting or renewing of the permit would perpetuate or encourage any of the following:
  - i. Distribution of cannabis or cannabis products to minors;
  - ii. Generation of revenue from the sale of cannabis or cannabis products to fund criminal enterprises, gangs or cartels;
  - iii. Diversion of cannabis or cannabis products to jurisdictions outside of the state where cannabis and cannabis products are unlawful under state or local law;
  - iv. Trafficking of other illegal drugs or facilitation of other illegal activity;
  - v. Violence and the use of firearms in the cultivation and distribution of cannabis and cannabis products;
  - vi. The use of public lands in the cultivation of cannabis; or
  - vii. The use of federal property for commercial cannabis activity.
- 5. For any other reason that would allow the state to deny a license under MAUCRSA.
- 6. Fails to pay required city fees and taxes.
- 7. Violates any provision of MAUCRSA, this chapter or any other permits issued by the city for the commercial cannabis activity, such as a conditional use permit.
- 8. Except as provided in subsections (D)(2)(iv) and (v) of this section, an application for a permit shall not be denied if the sole ground for denial is based upon a prior conviction of either section 11350 or section 11357 of the Health and Safety Code. An application for a permit also shall not be denied if the state would be prohibited from denying a license pursuant to either section 26057, subdivision (b)(5), or section 26059 of the Business and Professions Code. Conviction of any controlled substance felony subsequent to permit issuance shall be grounds for revocation of a permit or denial of the renewal of a permit.

E. Suspension and Revocation.



1. If the city manager deems continuation of any commercial cannabis activity will cause a significant threat to the health, safety, or welfare of the public, the city manager may suspend the permit and all rights and privileges thereunder until the city council renders a written decision on the revocation of the permit.
2. The city manager shall give notice to the cannabis business of his or her intent to revoke a permit in the same manner as notice of disapproval and provide the city clerk with a copy of the notice.
3. The appeal rights and hearing for the revocation of the permit shall be set and conducted in the same manner as an appeal of disapproval under section 5.34.05(C). The decision of the city council shall be final.

#### **5.34.06 Permit Issuance**

- A. Before issuing any permit the city manager shall determine that all of the following requirements have been met:
  1. The application is complete and all applicable city taxes and fees have been paid.
  2. All land use permits have been approved and all conditions of approval have been met or are in good standing.
  3. There are no outstanding notices of nuisance or other unresolved code compliance issues at the site of the proposed commercial cannabis activity or related to the cannabis business owner(s).
- B. By accepting the permit, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law the city, its officers, agents and employees from and against any and all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability caused by the sole active negligence or willful misconduct of city, its officers, agents and employees.
- C. The permit shall be valid for one (1) year from the date of issuance.

#### **5.34.07 Transfer of Permit or Modifications to Permit**

- B. A permit is nontransferable to another location, and no transfer to another cannabis business owner or modifications to a permitted facility may be made except in accordance with this section.
- C. A request for change in permit ownership shall be submitted to the city manager on a city form at least sixty (60) days prior to the anticipated transfer, together with any applicable fee(s). Requests submitted less than sixty (60) days before the transfer will be processed only in the city's discretion and may be subject to an expedited processing fee. A new owner(s) shall meet all requirements for

applicants of an initial permit. The request shall include the following information:

1. Identifying information for the new cannabis business owner(s) and management as required in an initial permit application;
  2. A written certification by the new cannabis business owner(s) as required in an initial permit application;
  3. The specific date on which the transfer is to occur; and
  4. Acknowledgement of full responsibility for complying with the existing permit.
- D. A request to modify the security plan shall be submitted to the city manager on a city form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- E. A request for change in cannabis business contact information shall be submitted to the city manager on a city form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- F. A request for change in cannabis business trade or business name shall be submitted to the city manager on a city form at least thirty (30) days prior to the anticipated change, together with the applicable fee.
- G. A permit renewal application and any applicable fees must be submitted to city manager at least sixty (60) days before the expiration of the permit. Failure to submit a renewal application prior to the expiration date of the permit will result in the automatic expiration of the permit on the expiration date. Permit renewal is subject to the laws and regulations effective at the time of renewal, which may be substantially different than the regulations currently in place and may require the submittal of additional information to ensure that the new standards are met. No person shall have any entitlement or vested right to receive a permit under this chapter.

#### **5.34.08 Standard Provisions for all Commercial Cannabis Activities**

- A. All commercial cannabis activities shall have all appropriate state licensing required prior to commencement of use.
- B. No permittee shall sell cannabis or cannabis products to persons under 21 years of age; allow any person under 21 years of age on its premises; or employ or retain persons under 21 years of age. No permittee shall sell medicinal cannabis products to persons under 18 years of age unless accompanied by a parent or guardian.
- C. All commercial cannabis activities shall maintain a 600 foot distance from all properties containing schools, pre-schools, licensed day care facilities, and parks.

- D. All commercial cannabis activities shall obtain and maintain a business license from the city.
- E. Commercial cannabis activities shall not be allowed as a home occupation.
- F. All applications shall provide an operations plan containing at a minimum the following items:
  - 1. General project information
    - i. Site plan providing both a graphic and written representation of the applicant's intended development. The plan shall adhere to the general site plan standards contained in section 17.29.030 and shall include all structures, storage and circulation patterns of the site.
    - ii. Written project description containing:
      - a. General project description.
      - b. A statement of present and proposed ownership.
      - c. A complete list of all individuals and entities with a financial interest in the operation.
      - d. A list and description of all uses shown in the provided site plan.
    - iii. Floor plan showing the locations of all proposed activities.
    - iv. Sign plan consistent with the provisions outlined in section 17.52 of this code.
    - v. Agreement to maintain at all times commercial general liability providing coverage on an occurrence basis for bodily injury, including death, of one (1) or more persons, property damage and personal injury with limits of not less than one million dollars (\$1,000,000.00) per occurrence and comprehensive automobile liability (owned, non-owned, hired) providing coverage on an occurrence basis for bodily injury, including death, of one (1) or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000.00). The commercial general liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the city shall be primary, and shall name the city, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for suspension of the permit immediately, and ultimately, revocation.
  - 2. Security provisions.

- i. Operations shall provide adequate security on the premises, including lighting, security cameras, security personnel and alarms, to ensure the safety of persons and to protect the premises from theft. Security camera footage shall be retained a minimum of 30 days.
- ii. The plan shall include the name, phone number and email of community relations staff whom may be contacted at any time regarding operational problems associated with the commercial cannabis activity.
- iii. A current register of the names of all employees currently employed by the use shall be provided and maintained on site. Employee register and contact information shall be current and up-to-date at all times. Any changes made to the employee register shall be provided to the city manager within thirty (30) days.
- iv. All employees either direct or via contract shall undergo a background check by the city police department. An individual may fail the background check if they have been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the police chief determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the police chief shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, owner, licensee to be issued a license based on the evidence found through the review. In determining which offences are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the police chief shall include, but not be limited to, the following:
  - a. A violent felony conviction, as specified in subdivision (c) of section 667.5 of the Penal Code.
  - b. A serious felony conviction, as specified in subdivision (c) of section 1192.7 of the Penal Code.
  - c. A felony conviction involving fraud, deceit, or embezzlement.
  - d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substances to a minor; or selling, offering to sell, furnishing, offering to furnish,

administering, or giving any controlled substance to a minor.

- e. A felony conviction for drug trafficking with enhancements pursuant to section 11370.4 or 11379.8 of the Health and Safety Code.
- f. Any other conviction that may disqualify an applicant/owner or permittee under state law.
- v. Verification that the security provisions for the operation have been reviewed and approved by the city police department prior to the issuance of a development permit.

3. Public health and safety provisions

- i. Facility improvement plan demonstrating that the operation is compliant with all applicable public health and safety provisions of the International Building Code. The facility improvement plan shall be reviewed and approved by the applicable fire agency and city building division prior to the issuance of a development permit.
  - ii. Statement of proposed water usage.
  - iii. Wastewater disposal plan reviewed and approved by the city utilities division prior to the issuance of any development permit. The wastewater disposal plan shall include any specific designs for pre-treatment of waste prior to entering municipal sewer system. No waste containing hazardous materials or other containments shall be permitted to enter the municipal sewer system consistent with Chapter 13.20 of this municipal code concerning "Sewer Use And Pretreatment."
  - iv. Solid waste disposal plan, including the management of cannabis related waste.
  - v. Hazardous waste management plan to be approved by Lake County Health Department.
  - vi. Odor prevention plan that will prevent obnoxious odors or fumes from being emitted beyond the operation limits that are perceptible by a reasonable person. Minimum design specifications should include odor absorbing ventilation and exhaust systems.
- G. All commercial cannabis activities shall submit an annual performance review report demonstrating compliance with required provisions of this section and all specific operating provisions and licensing required at the time of development approval. Failure to submit an annual report or failure to comply with required

provisions will result in revocation of the operating permit. The annual performance review report shall include inspection by city.

- H. All permittees shall comply with the state track and trace requirements for cannabis and cannabis products.
- I. The rights and privileges to conduct commercial cannabis activities on a specific parcel do not attach to title to the property and are not conveyed with the lease or sale of the property. Accordingly, a permit may not be sold, assigned, leased or otherwise conveyed or transferred by the person or entity holding the permit to any third party not named on the application without complying with this chapter and any other applicable law.
- J. Except as provided herein, all other cannabis activities are prohibited.

#### **5.34.09 Commercial Cannabis Performance Standards**

- A. Commercial Cannabis Cultivation Standards. (Type 1A, 1C, 2A, 3A, 4 & 12)
  - 1. Use type includes:
    - i. Cultivation of cannabis
    - ii. Cannabis nursery including the production of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, cultivation of cannabis for sale to licensed commercial cannabis cultivators and licensed retail establishments. No retail sales are permitted.
    - iii. Cannabis processing such as drying, curing, grading, or trimming.
    - iv. Accessory uses related to the planting, growing, harvesting, drying, curing, grading, or the trimming of cannabis
  - 2. Specific Provisions:
    - i. All commercial cannabis cultivation operations shall not engage in the retail sale of any product goods or services, excluding microbusiness with retail. Only wholesale activities are permitted.
    - ii. All cultivation activities shall take place indoors, out of sight of the general public. No greenhouses shall be allowed.
    - iii. All cannabis cultivation, that includes processing such as drying, curing, grading, or trimming shall take place indoors.
    - iv. The permittee shall use best management practices to minimize water use with cannabis cultivation. This would include the use of low flow irrigation. The permit shall include a plan for water use associated with the cultivation.

- v. If manufacturing of cannabis takes place on the site of the cannabis cultivation, compliance with the manufacturing standards of this chapter are also required.
- vi. The applicant shall prepare an integrated management plan consistent with the regulations associated with the California Department of Toxic Substances Control for all chemical, biological and cultural methods to control or prevent the introduction of pests on the cultivation site.

B. Commercial Cannabis Manufacturing Standards. (Type 6 & 7)

1. Use type includes:

- i. Extractions using mechanical methods or nonvolatile solvents.
- ii. Extractions using volatile solvents.

2. Specific Provisions:

- i. Commercial cannabis manufacturing activities shall not conduct or engage in the retail sale of any product goods or services. Only wholesale activities are permitted.
- ii. Applicant shall enact sufficient methods or procedures to capture or otherwise limit risk of explosion, combustion, or any other unreasonably dangerous risk to public safety created by volatile solvents.
- iii. All commercial cannabis manufacturing shall take place indoors.
- iv. The permittee shall use best management practices to minimize water use with cannabis manufacturing.
- v. The permittee shall provide a list to the public works director and Lakeport Fire Department of all solvents, gasses and/or chemicals prior to commencement of use. No solvents, gasses and/or chemicals shall be allowed to enter the city's wastewater system.
- vi. Manufacturing processes that use solvents exclusively within a closed-loop system that meets all of the following requirements:
  - a. The system uses only solvents that are generally recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).
  - b. The system is designed to recapture and contain solvents during the manufacturing process, and otherwise prevent the off-gassing of solvents into the ambient atmosphere to mitigate the risks of ignition and explosion during the manufacturing process.

- c. Receives and maintains approval from the local fire official for the closed-loop system, other equipment, the extraction operation, and the facility and meets the following: the California Fire Code; the National Fire Protection Association (NFPA) standards; International Building Code (IBC); and the International Fire Code (IFC).

C. Commercial Cannabis Testing Standards. (Type 8)

1. Use type includes:

- i. Testing of cannabis and cannabis products.
- ii. Businesses and research institutions engaged in the research of cannabis and cannabis products, or devices used for the use of cannabis and cannabis products.
- iii. Business offices related to cannabis.
- iv. Accessory uses related to the testing of cannabis and cannabis products.

2. Specific Provisions

- i. Commercial cannabis testing operations shall not conduct or engage in the retail sale of any product goods or services.
- ii. The permittee shall use best management practices to minimize water use with cannabis testing.

D. Distribution of Commercial Cannabis (Type 11)

1. Use type includes:

- i. Businesses engaged in the distribution of commercial cannabis, cannabis products, or devices used for the use of cannabis products.
- ii. The procurement, sale, and transport of cannabis and cannabis products between entities licensed under state law.
- iii. Transporting cannabis or cannabis products.
- iv. Conducting quality assurance review to ensure compliance with labeling and packing requirements.
- v. Accessory uses related to the procurement, sale, and transport of cannabis and cannabis products.

2. Specific Provisions:

- i. A distributor permittee shall be bonded and insured at a minimum level established by the licensing authority.
- ii.



- iii. All cannabis and cannabis products held bought, and sold be a cannabis distributor shall be obtained from a legal source and shall have the state issued track and trace information.

E. Commercial Cannabis Retailers Standards. (Type 10 & 12)

1. Use type includes:

- i. Retailer storefront with sales of cannabis, cannabis products or devices is prohibited.
- ii. Retailer storefront with the delivery of cannabis, cannabis products or devices is prohibited.
- iii. Retailer delivery of cannabis, cannabis products or devices.
- iv. Storefront retail with onsite consumption is prohibited.
- v. Microbusinesses with storefront retail included is prohibited.
- vi. Microbusinesses with retailer delivery of cannabis, cannabis products or devices.

2. Specific Provisions:

- i. A commercial cannabis permit for retailer issued in compliance with Section 5.34.04 shall be required for any cannabis retailer operating within the city. Cannabis retailers shall also be subject to permit requirements and regulations established by the state and those established by the city council through resolution or ordinance. Additionally, cannabis retailers must comply with all other applicable building codes and requirements, including accessibility requirements. Permits shall only be issued to cannabis retailers coming under state cannabis license Types 10 (Retailers) and 12 (Microbusiness). Commercial cannabis permits for retailers shall be subject to the requirements and limitations set forth in this Chapter.
- ii. No exterior signage or symbols shall be displayed which advertises the availability of cannabis using drug-related symbols which are attractive to minors or which is carried out in a manner intended to encourage persons under twenty-one (21) years of age to consume cannabis or cannabis products, nor shall any such signage or symbols be displayed on the interior of the facility in such a way as to be visible from the exterior.
- iii. No cannabis retailer shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages on the same premises. No alcoholic beverages shall be allowed or consumed on the premises.

- iv. No cannabis retailer shall conduct or engage in the commercial sale of any product, good or service unless otherwise approved by the permit. A retailer may sell live starter plants, clones and seeds from qualified nurseries, but shall not cultivate or clone cannabis (unless the retailer holds a microbusiness or cultivation license from the state and such activities are allowed on the same premises under state law).
- v. No cannabis shall be smoked on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.
- vi. The following signs, in measurements of not less than eight by ten inches (8x10"), shall be clearly and legibly posted in a conspicuous location inside the retailer where they will be visible to customers in the normal course of a transaction, stating:
  - a. "The sale of cannabis without a state license is illegal."
  - b. "Smoking cannabis on this property, within twenty feet (20') of the retailer, or in any public place is illegal under California law."
  - c. For medical cannabis retailers: "No one under the age of eighteen (18) shall be allowed on the premises, unless they are a qualified patient or a primary caregiver."
  - d. For nonmedical cannabis retailers: "No one under the age of twenty-one (21) shall be allowed on the premises."
- vii. Any commercial cannabis permit issued to microbusiness with a Type 12 state license, or a state cannabis license type subsequently established, that contains a retailer operation, will be subject to the permit procedures and requirements for cannabis retailers under this section 5.34.09(E). Any commercial cannabis permit issued to a microbusiness with a cultivation, manufacturing and/or distribution component will also be subject to the requirements of section 5.34.09(A), (B), (C) and/or (D) for those operations.
- viii. Except as provided in section 5.34.09(E)(2)(vii) for microbusinesses, commercial cannabis cultivation and, manufacturing are prohibited on the same premises.
  - ii. Cannabis retailers shall contain no window displays that are visible by normal unaided vision from a public place.
  - iii. All cannabis deliveries shall have all records identifying the originating location and terminus of the cannabis or cannabis

products, as well as all corresponding licenses consistent with all applicable state licensing requirements.

- iv. The operating plan for all cannabis deliveries shall include driver identification and license information for all employees engaged in delivery operations. Vehicle information including license, year, make and model shall also be listed in the operating plan.
- v. Vehicles used in the delivery of cannabis shall have no signage and shall be un-marked.
- vi. The sale of ancillary products, including books, herbal supplements, and devices facilitating the consumption of cannabis shall occur in a manner consistent with this section, and in compliance with all state requirements.
- vii. The maximum retail days and hours of operations shall be Monday through Sunday, 9:00 a.m. through 7:00 p.m.

F. Cannabis Events within the city are prohibited.

#### **5.34.10 Fees**

The city council shall, by resolution, establish a schedule of fees for commercial cannabis license applications, amendments, renewals and other matters pertaining to this chapter. The schedule of fees may be changed or modified by resolution of the city council. Applicants and permittees also shall pay the amount as prescribed by the Department of Justice of the State of California for the processing of applicant's fingerprints. None of the above fees shall be prorated, or refunded in the event of a denial, suspension or revocation of the permit. Failure to pay the applicable fees is grounds for denial of an application.

#### **5.34.11 Enforcement**

- A. Any person violating any provision of this chapter or misrepresenting any material fact in demonstrating compliance with requirements for engaging in a commercial cannabis activity shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment.
- B. Any violation of this chapter is declared to be a public nuisance as defined in section 370 of the Penal Code, section 3480 of the Civil Code and Chapter 8.22 of this municipal code and shall be subject to injunctive relief, revocation of the certificate of occupancy for the property, disgorgement and payment to the city of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The city may also pursue any and all remedies and actions available and applicable under local and state law for any violation committed by the

commercial cannabis owner, its managers, members or any person related or associated with the commercial cannabis activity.

- C. Any violation of the terms and conditions of the commercial cannabis activity in this chapter shall be grounds for suspension and revocation of the permit.

#### **5.34.12 Liability**

The provisions of this chapter shall not be construed to protect the record property owner(s) of a legal parcel associated with any commercial cannabis activity, his or her lessees, tenants, and other participants in the operation of a commercial cannabis activity, and/or members of collectives and/or cooperatives associated with such activity, from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of cannabis remain violations of federal law as of the date of adoption of the ordinance creating this chapter and this chapter is not intended to, and does not, protect any of the above described persons from arrest or prosecution under those federal laws. The record property owner(s) of a legal parcel associated with any commercial cannabis activity, his or her lessees, tenants, and other participants in such activity, and/or members of collectives and/or cooperatives associated with such use, assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from engaging in a commercial cannabis activity. Further, to the fullest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or employee of the city or the city itself shall not become a personal liability of such person or the liability of the city.

**SECTION 2. Section 17.08.050.J of 17.08, Regulations for the Professional Office District or "PO" District, of the Lakeport Municipal Code is hereby added as follows:**

- J. Commercial cannabis testing subject to the regulations set forth in Chapter 5.34.

**SECTION 3. Section 17.10.050.N of 17.10, Regulations for the Major Retail or "C-2" District, of the Lakeport Municipal Code is hereby added as follows:**

- N. Commercial cannabis consisting of testing subject to the regulations set forth in Chapter 5.34.

**SECTION 4. Section 17.11.050.K of 17.11, Regulations for the Service Commercial or "C-3" District, of the Lakeport Municipal Code is hereby added as follows:**

- K. Commercial cannabis consisting of cultivation, manufacturing without volatile solvents, testing, distribution and retailers activities subject to the regulations set forth in Chapter 5.34.

**SECTION 5.** Section 17.13.040.R of 17.07, Regulations for Industrial or "I" Zoning District, of the Lakeport Municipal Code is hereby added as follows:

- R. Commercial cannabis consisting of cultivation, manufacturing with and without volatile solvents, testing, distribution and retailers activities subject to the regulations set forth in Chapter 5.34.

**SECTION 6. Severability:** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 7. CEQA.** This ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. Additionally, the revision to the Lakeport Municipal Code provides for a discretionary review process for the approval of commercial cannabis related permits and is eligible for the exemption from the CEQA Guidelines provided in Section 26055(h) of the California Business and Professions Code. Furthermore, the ordinance constitutes a regulatory action to assure the protection of the environment and is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.

**SECTION 8. Effective Date.** This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

**SECTION 9. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

INTRODUCED and first read at a regular meeting of the City Council on the 21<sup>st</sup> day of November, 2017, by the following vote:

AYES: Mayor Mattina, Council Members Barnes, Parlet, Spurr and Turner

NOES: None

ABSTAIN: None

ABSENT: None

FINAL PASSAGE AND ADOPTION by the City Council of Lakeport occurred at a meeting thereof held on the 2<sup>nd</sup> day of January 2018, by the following vote:

AYES: Mayor Turner, Council Members Barnes, Mattina, Parlet and Spurr

NOES: None

ABSTAIN: None

ABSENT: None

  
MIREYA TURNER, MAYOR

ATTEST:

  
KELLY BUENDIA, City Clerk  
City of Lakeport

**PLANNING PROJECTS PENDING**  
**as of**  
**November 5, 2021**

No.	Staff Assigned	File No./Name	Date Received	Progress	Next Action	PC / Staff Level
1.	Jenni	GPA & Zoning Inconsistencies	6/2/2016	Staff currently preparing required exhibit maps and ordinance language for recommended General Plan and Zone changes.	C.C. review (May / June)	<b>P.C. Approved 8/15/2018</b>
2.	Jenni	New Vista Development – Lakeport Hub AR 19-08, S 19-01, UP 19-04, ZP 19-05, and ER 19-03	10/7/2019	Application for a Combined Development Permit for the property at 1842 Todd Road in Lakeport California. The project would include the following: A Tentative Subdivision Map to subdivide a 14.89-acre parcel into eight (8) separate commercial properties. An Architectural and Design Review for the construction of ten (10) structures that include one (1) service station with bays, four (4) restaurants with drive thru facilities, two (2) restaurants, one (1) three story 70-unit hotel and three (3) commercial retail buildings. The total square footage of all the structures on the property would be approximately 94,850 square feet.	P.C. Review	<b>P.C. Review</b>
3.	Jenni	Microenterprise Home Kitchen – AB626 Application# 2020-25		Consideration of the recent Lake County ordinance permitting Microenterprise Home Kitchens in accordance with AB 626.		
4.	Jenni	Peter Caravella – Application # 2021-21 – 1220 & 1240 Central Park Ave.	6/23/2021	Voluntary merger of two contiguous parcels.	Recordation	<b>Staff Review</b>
5.		Sunil K. Joshi / Ryan Villanueva Construction – Application #2021-27 – 25 C Street	8/25/2021	Application for a Shoreline Development permit to replace a failing sea wall.	Staff Review	<b>Staff Review</b>

6.		AGM & Associates – Application #2021-15 – 447 Bevins Street	9/16/2021	Application for a 40-unit senior housing new construction project.	<b>**Per SB 330, This affordable housing project is a ministerial activity, not subject to Planning Commission approval or CEQA review.</b>	<b>Staff Review</b>
7.		Waterstone Residential / Peter Schellinger – Application #2021-31 – 1310 Craig Avenue	10/19/2021	Application for a Zone Change, Tentative Subdivision Map, Environmental Review, and General Plan Amendment for a new 128-unit apartment complex and 48 cluster homes.	PC Review	<b>PC Review</b>
8.		City of Lakeport – Application #2021-33 – Model Water Landscape Ordinance		Planning Commission will consider a minute order to amend the Municipal Code for compliance with SB 1383 which requires jurisdictions to adopt specific sections of CALGreen as well as adoption of the Model Water Landscape Ordinance.	PC Review	<b>PC Review 11/13/2021</b>