**ORDINANCE NO. 1431**

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING CHAPTER 8.10 (MEDICAL MARIJUANA CULTIVATION) TO ENSURE CONSISTENCY WITH STATE LAW AND TO ALLOW OUTDOOR CULTIVATION OF CANNABIS FOR PERSONAL USE**

**WHEREAS,** Napa County Code Chapter 8.10 was adopted on February 2, 2016, prior to the legalization of cannabis for personal use; and

**WHEREAS,** on November 8, 2016, California voters approved Proposition 64, known as the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), to legalize the possession, use, and cultivation of up to six cannabis plants per private residence for personal use; and

**WHEREAS,** the statutes now in force due to the passage of AUMA and subsequent legislation relating to personal cultivation of cannabis necessitate that the County update its existing Code to ensure consistency with State law; and

**WHEREAS,** California Health & Safety Code Section 11362.2 permits the County to reasonably regulate indoor cultivation of cannabis for personal use, and regulate and/or completely prohibit the outdoor cultivation of cannabis for personal use; and

**WHEREAS,** in response to the passage of AUMA and subsequent implementing legislation and regulations, the Board of Supervisors, at an open public meeting, directed staff to bring forward to the Napa County Planning Commission a proposed ordinance to allow the outdoor cultivation of cannabis for personal use; and

**WHEREAS,** the unregulated personal cultivation of cannabis in the unincorporated area of Napa County can adversely affect the health, safety, and well-being of the County, its residents and environment; and

**WHEREAS,** comprehensive civil regulation of premises used for personal cultivation is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and fire and building hazards that may result from unregulated cannabis cultivation; and

**WHEREAS,** in the past year, four violent home invasion robberies have occurred in neighboring Sonoma County, with the alleged assailants allegedly targeting the homes based on the belief that cannabis was stored or grown there; and

**WHEREAS,** because children are particularly vulnerable to the effects of cannabis use, the presence of cannabis products is an attractive nuisance for children, and cannabis plants have the potential to attract violent crime, the outdoor cultivation of cannabis plants within close proximity to schools and parks creates an unreasonable hazard; and

**WHEREAS,** nothing herein shall be construed to allow cultivation or use of cannabis, or allow any activity relating to the cultivation or use of cannabis, that is otherwise illegal under State law; and

**WHEREAS,** nothing herein shall be construed to allow any form of commercial cannabis activity as defined by State law; and

**WHEREAS,** the Board finds and declares that the adoption of this Ordinance is necessary and desirable to ensure that environmental, public health, safety and nuisance factors related to the cultivation of cannabis for personal use are adequately addressed.

The Napa County Board of Supervisors, State of California, ordains as follows:

**SECTION 1.** Chapter 8.10 (Medical Marijuana Cultivation) of the Napa County Code is amended to read in full as follows:

**Chapter 8.10**

**PERSONAL CANNABIS CULTIVATION**

**Sections:**

**8.10.010 Purpose and intent.**

**8.10.020 Definitions.**

**8.10.030 General regulations for all cannabis cultivation.**

**8.10.040 Additional regulations for outdoor cannabis cultivation.**

**8.10.050 Additional regulations for indoor cultivation.**

**8.10.060 Public nuisance.**

**8.10.070 Violations and penalties.**

**8.10.010 Purpose and intent.**

A. It is the intent of the board of supervisors to prohibit the large scale cultivation of cannabis in the unincorporated area of the county, while regulating the cultivation of limited amounts of cannabis for personal use as allowed by state law or for medical purposes to accommodate the needs of persons with an identification card and/or their primary caregivers, in order to protect Napa County's unique and sensitive environment, and to preserve the public peace, health, safety and general welfare of the citizens of, and visitors to the county.

B. It is also the intent of the board that nothing in this chapter shall be construed to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance.

2. Allow any form of commercial cannabis activity.

3. Allow the use or diversion of cannabis for purposes in violation of State or local law.

4. Allow the cultivation or use or allow any activity relating to the cultivation or use of cannabis that is otherwise illegal under State law.

**8.10.020 Definitions.**

For purposes of this chapter, the following definitions shall apply:

“Cannabis” shall have the same definition as set forth in California Business and Professions Code Section 26001.

“Commercial cannabis activity” shall have the same definition as set forth in California Business and Professions Code Section 26001.

“Cultivation” or “cultivate” means any activity involving the planting, growing, harvesting, drying, curing, processing or storage of cannabis in any location, indoor or outdoor, including within a fully enclosed and secure structure.

“Front yard” shall have the same meaning as set forth in subsection (A) of Section 18.08.650 of this code.

“Fully enclosed and secure structure” means a space within a building or other structure that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure shall: 1) be adequately secure to prevent unauthorized entry; 2) include a secure locking mechanism consisting of at least a deadbolt lock that shall remain locked at all times when a person with an identification card or primary caregiver is not present within the cultivation area; and 3) provide complete visual screening of the cultivation.

“Indoor” or “indoors” means within a fully enclosed and secure structure.

“Legal parcel” shall have the same meaning as set forth in Section 17.02.320 of this code.

“Outdoor” or “outdoors” means any location that is not within a fully enclosed and secure structure. For the purposes of this chapter, cultivation within a greenhouse or “hoop house” shall be considered outdoor cultivation.

“Park” means an area of land used for community recreation owned or operated by a public entity. This definition does not include any state or federal park or forestland.

“Person with an identification card” shall have the same definition as set forth in subsection (c) of California Health and Safety Code Section 11362.7.

“Premises” means a single legal parcel or, where there are contiguous legal parcels under common ownership or control, such contiguous legal parcels shall constitute the “premises” for purposes of this chapter.

“Primary caregiver” shall have the same definition as set forth in subsection (d) of California Health and Safety Code section 11362.7.

“Private residence” shall have the same definition as set forth in California Health and Safety Code Section 11362.2.

“School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any preschool facility. This definition includes a nursery school, preschool, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college.

**8.10.030 General regulations for all cannabis cultivation.**

A. General Provisions

1. It is unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the unincorporated area of the county to cause or allow such parcel to be used for the cultivation of cannabis, except as provided for and in strict compliance with all applicable provisions of this chapter.

2. Cultivation of cannabis pursuant to this chapter is allowed only on premises with private residences.

3. Subject to the provisions of section 8.10.040 and 8.10.050, not more than the quantity of cannabis plants set forth in California Health and Safety Code Section 11362.2 may be cultivated, whether indoors, outdoors, or any combination thereof, within a single private residence or upon the grounds of that private residence at one time. The limitation set forth in this subsection shall apply regardless of the number of persons authorized to cultivate cannabis pursuant to subsection (B) of Section 8.10.030 residing at the private residence.

4. Cannabis cultivation shall not cause a public nuisance to or adversely affect the health, safety, or general welfare of persons at the cultivation premises, in any public right-of-way adjacent to the cultivation premises, or at any nearby residence or nearby property or areas open to the public, including, but not limited to, by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, or vibration, or by the use or storage of hazardous materials, processes, products or wastes.

5. All of the following in connection with cannabis cultivation are prohibited:

a. The use of any volatile chemical or gas product, including but not limited to carbon dioxide (CO2) and butane.

b. The use of any fossil fuel-powered electrical generator.

c. Any use or storage of pesticide or fertilizer products inconsistent with State law and regulations, including but not limited to, regulations promulgated by Department of Pesticide Regulation rulemaking action number DPR 16-004.

6. Any structure or electrical device used in connection with cannabis cultivation shall comply with the California Building, Electrical and Fire Codes as adopted by the county.

7. All water used in connection with cannabis cultivation shall be obtained from a legal source and shall be applied in accordance with all applicable ordinances, laws, and regulations.

8. It shall be unlawful for any person, after receiving written notice by the owner or landlord of a premises that cannabis cultivation is prohibited, to begin or continue to cultivate cannabis on that premises or in any common area of that premises if the premises exists on a multi-family or multi-unit parcel.

9. It shall be unlawful for any person cultivating cannabis pursuant to this chapter to sell, offer for sale, furnish, administer, or donate the cannabis allowed to be grown under this chapter in any manner inconsistent with California Health and Safety Code Section 11362.1. A primary caregiver that receives compensation for cultivation services, or monies in advance or reimbursement for actual expenses incurred to cultivate cannabis, such as the costs of starter plants or seed, soil, containers, and utilities, from a person with an identification card to enable that person to use cannabis, shall not, on the sole basis of those payments, be deemed to be a seller of cannabis for the purposes of this chapter.

B. Persons Authorized to Cultivate Cannabis. The following persons may engage in the cultivation of cannabis:

1. A person twenty-one years of age or older, so long as the person resides at the residence where the cultivation of cannabis occurs.

2. A person with an identification card, so long as the person resides at the residence where the cultivation of cannabis occurs.

3. A primary caregiver, so long as the primary caregiver and/or the person for whom the primary caregiver is cultivating resides at the residence where the cultivation of cannabis occurs.

**8.10.040 Additional regulations for outdoor cannabis cultivation.**

In addition to the regulations specified in Section 8.10.030, the following regulations shall apply to any outdoor cultivation:

A. Outdoor Cultivation Standards. Outdoor cultivation shall conform to the following standards:

1. Outdoor cultivation of cannabis is prohibited:

a. In the front yard of any parcel.

b. In any location visible from a public right of way.

c. Within ten feet of any property line of any parcel owned by any person or entity other than the person engaging in the outdoor cultivation.

2. The maximum number of cannabis plants allowed to be cultivated outdoors shall be as follows:

a. On parcels within three hundred feet of any school or park, up to two cannabis plants may be cultivated outdoors in strict compliance with all other applicable provisions of this chapter. The limitation set forth in this subsection shall apply regardless of the number of persons authorized to cultivate cannabis pursuant to subsection (B) of Section 8.10.030 residing at the private residence. For the purposes of this subsection, a parcel shall be deemed to be within three hundred feet of a school or park if the distance, as measured in a straight line, from any point along the property line of the parcel where cultivation is to occur is three hundred feet or fewer from any point along the property line of any parcel containing a school, portion of a school, park, or portion of a park.

b. On all parcels not within three hundred feet of any school or park as measured by subsection (A)(2)(a) of Section 8.10.040, up to six cannabis plants may be cultivated outdoors at a residence in strict compliance with all other applicable provisions of this chapter. The limitation set forth in this subsection shall apply regardless of the number of persons authorized to cultivate cannabis pursuant to subsection (B) of Section 8.10.030 residing at the private residence.

3. Outdoor cultivation shall be enclosed by a solid fence or physical barrier at least six feet in height with a locking gate sufficient to prevent unauthorized access. Any such fence or physical barrier shall be constructed in accordance with the applicable provisions of this code.

4. The use of any electric light for the purpose of stimulating plant growth is prohibited.

**8.10.050 Additional regulations for indoor cannabis cultivation.**

In addition to the regulations specified in Section 8.10.030, the following regulations shall apply to any indoor cultivation:

A. Indoor Cultivation Standards. Indoor cultivation shall conform to the following standards:

1. Indoor cultivation of cannabis is allowed only within a fully enclosed and secure structure.

2. Any fully enclosed and secure structure used for the cultivation of cannabis that is separate from the private residence on a premises shall maintain a minimum ten-foot setback from any property line.

3. Any structure used for indoor cannabis cultivation shall be secured in a manner that prevents unauthorized entry.

4. Any structure used for indoor cannabis cultivation shall have proper ventilation and odor control filtration to prevent mold damage and prevent cannabis plant odors or particles from becoming a public nuisance to surrounding properties or the public. The cultivation of cannabis shall not subject residents of neighboring parcels who are of normal sensitivity to reasonably objectionable odors. A public nuisance may be deemed to exist if the cultivation produces odors that are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

**8.10.060 Planning Commission report.**

County staff shall be required to submit a report to the Napa County Planning Commission in June 2019, in which the ordinance’s enforcement and potential amendments are discussed. Upon review, the Napa County Planning Commission shall forward the report along with recommendations, if any, to the Napa County Board of Supervisors.

**8.10.070 Public nuisance.**

Any violation of this chapter is a public nuisance.

**8.10.080 Violations and penalties.**

Any violation of this chapter shall be subject to abatement and penalties as provided for in Chapters 1.20 and 1.28 of this code or any successor chapters thereto.

**SECTION 2.** The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project and meets the “general rule” as defined in Sections 15378 and 15061(b)(3) of the CEQA Guidelines. Adoption of the ordinance has no potential for resulting in physical changes to the environment, either directly or indirectly. Furthermore, it has been determined that this type of project does not have a significant effect on the environment and is exempt from CEQA under Section 15301 [See Class 1 (“Existing Facilities”)] and Section 15303 [See Class 3 (“New Construction or Conversion of Small Structures”)]. See also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

**SECTION 4**. This ordinance shall be effective thirty (30) days from and after the date of its passage.

**SECTION 5.** A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

**SECTION 6.** Napa County Ordinance No. 1430 as it relates to outdoor cultivation of cannabis personal use shall be repealed as of the effective date of this ordinance. All provisions of Napa County Ordinance Nos. 1425 and 1426 as they relate to commercial cannabis activity shall remain in force.

[Remainder of page intentionally left blank.]

The foregoing ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 19th day of June, 2018, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 10th day of July, 2018, by the following vote:

AYES: SUPERVISORS GREGORY, RAMOS, DILLON,

PEDROZA and WAGENKNECHT

NOES: SUPERVISORS NONE

ABSTAIN: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of the

State of California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BRAD WAGENKNECHT, Chair of the

Board of Supervisors

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| APPROVED AS TO FORM  Office of County Counsel  By: *John L. Myers* (e-sign)  Deputy County Counsel  By: \_*Eric L. Dixon* (e-sign)  County Code Services  Date: 6/4/18 | APPROVED BY THE  NAPA COUNTY  BOARD OF SUPERVISORS  Date: July 10, 2018  Processed By:    Deputy Clerk of the Board | ATTEST: JOSE LUIS VALDEZ  Clerk of the Board of Supervisors  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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JOSE LUIS VALDEZ, CLERK OF THE BOARD