

Additions are underlined.
Deletions are ~~struck through~~.
Revision markers are noted in left or
right margins as vertical lines.

ORDINANCE NO. _____

**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

MEDICAL MARIJUANA PERSONAL CANNABIS CULTIVATION

Sections:

8.10.010	Purpose and intent.
8.10.020	Definitions.
8.10.030	Medical marijuana dispensaries prohibited <u>General regulations for all cannabis cultivation.</u>
8.10.040	Outdoor cultivation of marijuana prohibited <u>Additional regulations for outdoor cannabis cultivation.</u>
8.10.050	Indoor cultivation of marijuana <u>Additional regulations for indoor cultivation.</u>
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 ~~marijuana-cannabis~~ in the unincorporated area of the county, while regulating the cultivation of limited amounts of ~~marijuana-cannabis~~indoors for personal use as allowed by state law or for medical purposes to accommodate the needs of ~~qualified patients~~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. ~~a~~Allow persons to engage in conduct that endangers others or causes a public nuisance.

2. ~~or to a~~Allow any form of commercial cannabis activity.

3. Allow the use or diversion of ~~marijuana-cannabis~~ for ~~non-medical~~ 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:

~~“Cultivated area” means the contiguous area of vegetative growth of live marijuana plants on the premises.~~

~~“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 ~~one or more marijuana plants or any part thereof~~ cannabis in any location, indoor or outdoor, including within a fully enclosed and secure ~~building~~ structure.

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

~~“Dispensary” means any collective, cooperative, operation, including a store-front facility or structure, mobile facility, vehicle, or delivery service hub or office, wherein medical marijuana is made available, sold, offered for sale, given, distributed, packaged for delivery, traded, cultivated for, or otherwise provided to qualified patients and primary caregivers, as defined by this chapter. Dispensary shall not include the act of making a delivery of medicinal marijuana to a qualified patient or primary caregiver residing within Napa County by or from a dispensary located in another jurisdiction that is authorized to operate and make deliveries.~~

“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 ~~be~~: 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 qualified patient person with an identification card or primary caregiver is not present within the cultivation area; and 3) provide complete visual screening of the cultivation.

~~Cultivation within a greenhouse or “hoop house” shall not be considered indoor cultivation.~~

“Indoors” 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.

~~“Marijuana” shall have the same meaning as set forth in California Health and Safety Code section 11018 as of the effective date of this chapter and as may be amended.~~

~~“Medical marijuana” shall mean marijuana recommended by a licensed physician, in accordance with California Health and Safety Code Sections 11362.5, and 11362.7 through 11362.83 as of the effective date of this chapter and as may be amended (respectively, the CUA and the Medical Marijuana Program).~~

“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 ~~(d) as of the effective date of this chapter and as may be amended.~~

“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.

“Qualified patient” shall have the same definition as California Health and Safety Code section 11362.7(f) as of the effective date of this chapter and as may be amended.

“Rear yard” shall have the same meaning as set forth in Section 18.08.650 of this code.

“Residential structure” shall have the same meaning as set forth in Section 16.04.405 of this code.

“Single family dwelling” shall have the same meaning as set forth in Section 18.08.580 of this code.

“Vehicle” means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk, trail, or waterway, including but not limited to a device moved exclusively by human power.

8.10.030 ~~Medical marijuana dispensaries prohibited~~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.

~~Marijuana dispensaries, as defined in this chapter, are prohibited within the unincorporated area of the county. The prohibition includes, without limitation, renting, leasing, or otherwise permitting a medical marijuana dispensary to occupy or use a location, building, structure or vehicle.~~

8.10.040 Outdoor cultivation of marijuana prohibitedAdditional 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.

~~Outdoor cultivation of marijuana, as defined in this chapter, is prohibited within the unincorporated area of the county. 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 outdoor cultivation of marijuana.~~

8.10.050 Indoor cultivation of marijuanaAdditional 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. ~~General Provision. 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 marijuana within a fully enclosed and secure structure on the parcel, except as provided in subsections (B) and (C) of this section.~~

B. ~~Persons Permitted to Cultivate Marijuana Indoors. Only a qualified patient or a primary caregiver may engage in indoor cultivation of medical marijuana. The indoor cultivation shall be restricted to the premises containing the primary residence of the qualified patient or primary caregiver.~~

C. ~~Indoor Cultivation Standards. Marijuana cultivated indoors shall be in conformance-~~ Indoor cultivation shall conform to with the following standards:

1. ~~Indoor cultivation of marijuana is permitted only on premises with single family residential structures.~~

2. ~~Indoor cultivation of cannabis is allowed only within a fully enclosed and secure structure~~Marijuana cultivation is permitted only within fully enclosed and secure structures. No cultivation shall occur in apartments, duplexes, triplexes, or other multifamily dwellings.

~~3. Indoor cultivation of marijuana shall not exceed twenty five contiguous square feet of cultivated area per premises, regardless of how many qualified patients or primary caregivers are residing at the premises.~~

~~4. Only one contiguous cultivation area is allowed per premises. Marijuana cultivation shall not occur in both a detached structure and inside a residence on the same parcel.~~

~~5. 2. Any~~ fully enclosed and secure structure used for the cultivation of ~~marijuana-cannabis~~ that is separate from the ~~main-private~~ residence on a premises shall maintain a minimum ten-foot setback from any property line.

~~36. Any The~~ structure ~~used for containing the cultivation area~~ indoor cannabis cultivation shall be secured in a manner that prevents unauthorized entry.

~~7. Structures and electrical devices used for marijuana cultivation shall comply with the California Building, Electrical and Fire Codes as adopted by the county.~~

~~8. The use of any gas products (CO₂, butane, etc.) or fossil fuel powered electrical generators for marijuana cultivation is prohibited.~~

~~49. Any structure used for the cultivation of medical marijuana~~ indoor cannabis cultivation shall ~~must~~ have proper ventilation and odor control filtration to prevent mold damage and ~~to prevent marijuana-cannabis~~ plant odors or particles from becoming a public nuisance to surrounding properties or the public. The cultivation of marijuana-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.

~~10. Marijuana cultivation shall not adversely affect the health, safety, or general welfare of persons at the cultivation premises or at any nearby residence or nearby property or areas open to the public by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of hazardous materials, processes, products or wastes, or by any other way.~~

~~D. Sale or Other Disposition of Medical Marijuana Prohibited. It shall be unlawful for any person cultivating medical marijuana pursuant to this chapter to sell, offer for sale, furnish, administer, or donate the marijuana permitted to be grown under this chapter. A primary caregiver that receives compensation for cultivation services, or monies in advance or reimbursement for actual expenses incurred to cultivate marijuana, such as costs of starter plants or seed, soil, containers, and utilities, from a qualified patient to enable that person to use marijuana, shall not, on the sole basis of those payments, be deemed to be a seller of marijuana for purposes of this chapter.~~

8.10.060 ~~Public nuisance~~ 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.

~~Any violation of this chapter is a public nuisance.~~

8.10.070 ~~Violations and penalties~~ Public nuisance.

Any violation of this chapter is a public nuisance.

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

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. **1430XXXX** 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.

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

AYES:	SUPERVISORS	_____

NOES:	SUPERVISORS	_____
ABSTAIN:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

NAPA COUNTY, a political subdivision of the
State of California

BRAD WAGENKNECHT, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: _____ Deputy County Counsel By: _____ County Code Services Date: _____	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors By: _____
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	Deputy Clerk of the Board	
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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 _____.

_____, DEPUTY
JOSE LUIS VALDEZ, CLERK OF THE BOARD