**ORDINANCE NO. 1449**

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING NAPA COUNTY CODE CHAPTER 8.10 (PERSONAL CANNABIS CULTIVATION) TO ADD SECTION 8.10.025 PROHIBITING COMMERCIAL CANNABIS ACTIVITIES**

**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 to establish a state regulatory scheme for commercial cannabis activities; and

**WHEREAS,** on December 5, 2017, the Board of Supervisors adopted Ordinance No. 1425 establishing a 45-day temporary moratorium prohibiting all commercial cannabis activities in order to maintain the status quo and to prevent the potential environmental, public health, and safety harms that could stem from unregulated commercial cannabis operations; and

**WHEREAS,** on January 16, 2018, the Board of Supervisors adopted Ordinance No. 1426 extending the temporary moratorium prohibiting commercial cannabis activities for an additional 10 months and 15 days until December 4, 2018; and

**WHEREAS,** on July 10, 2018, the Board of Supervisors amended Chapter 8.10 of the Napa County Ordinance Code to allow personal cultivation of up to six cannabis plants consistent with state law; and

**WHEREAS,** on November 13, 2018, the Board of Supervisors adopted Ordinance No. 1436 extending the temporary moratorium prohibiting commercial cannabis activities for an additional year until December 4, 2019; and

**WHEREAS,** on September 17, 2019, the Board of Supervisors directed County staff to begin a public outreach effort in January 2020 to receive public input on whether commercial cannabis activities should be allowed in the unincorporated area of the County and discuss potential impacts and mitigation efforts relating to those activities; and

**WHEREAS,** while this public outreach effort progresses, the Board of Supervisors desires to balance maintaining the status quo of prohibiting commercial cannabis activities with ensuring adequate public access through the delivery of cannabis products by licensed commercial cannabis businesses located somewhere other than the unincorporated area of Napa County; and

**WHEREAS,** section 18.12.080 of the Napa County Ordinance Code explicitly states that no commercial use shall be permitted of any property located in the unincorporated area of the county other than as is specifically authorized by Title 18, and no commercial cannabis activity is so authorized; and

**WHEREAS,** the Napa County Ordinance Code employs “permissive zoning,” which means that if a land use is not specifically listed in the zoning code, it is prohibited; and

**WHEREAS,** case law establishes that permissive zoning codes prohibit commercial cannabis uses even if they do not expressly identify and ban them (*Urgent Care Medical Services v. City of Pasadena* (2018) 21 Cal.App.5th 1086, 1095; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1095; *The Kind & Compassionate v. City of Long Beach* (2016) 2 Cal.App.5th 116, 128-129; *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433; *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1165); and

**WHEREAS,** the permissive nature of the Napa County Ordinance Code and the explicit language of section 18.12.080 means that Title 18 would continue to prohibit all commercial cannabis activities even after the expiration of the temporary moratorium on December 4, 2019; and

**WHEREAS,** no further action is required by the Board of Supervisors to ban commercial cannabis activities or any other uses not identified as permissive uses in the Napa County Ordinance Code; and

**WHEREAS,** guidance received from the State cannabis licensing agencies, other counties throughout California, and governmental interest groups such as the League of California Cities and the Rural County Representatives of California nevertheless encourages local jurisdictions to adopt explicit ordinances or regulations affirmatively allowing or prohibiting commercial cannabis activities; and

**WHEREAS,** the Board of Supervisors finds and declares that adopting this ordinance as an explicit prohibition on commercial cannabis activities will provide Napa County residents with clarity and certainty relating to the legal status of commercial cannabis uses.

**NOW, THEREFORE,** the Napa County Board of Supervisors, State of California, ordains as follows:

**SECTION 1.** Section 8.10.025 (Commercial cannabis activities prohibited) is added to Chapter 8.10 of the Napa County Code to read in full as follows:

**8.10.025 Commercial cannabis activities prohibited.**

A. Except as provided for in this section, all forms of commercial cannabis activity shall be prohibited and shall not be an allowable use in any zone of the unincorporated area of Napa County and shall not be permitted for any purpose.

B. Nothing in paragraph A is intended to prohibit a licensed cannabis retailer, whose business is legally operated from a location not within the unincorporated area of Napa County, from completing a delivery of cannabis to a person located in the unincorporated area of the County, provided that the delivery is completed in strict compliance with state law.

C. This section shall not be construed to prevent the transportation of cannabis or cannabis products on public roads by a licensed commercial cannabis business transporting cannabis or cannabis products in compliance with state law.

**SECTION 2.** The adoption of this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility that the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. § 15308 (regulatory activity to assure protection of the environment).

**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.

The foregoing ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 15th day of October, 2019, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 22nd day of October, 2019, by the following vote:

AYES: SUPERVISORS DILLON, PEDROZA, WAGENKNECHT,

RAMOS and GREGORY

NOES: SUPERVISORS NONE

ABSTAIN: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of the

State of California

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

RYAN GREGORY, Chair of the

Board of Supervisors

|  |  |  |
| --- | --- | --- |
| APPROVED AS TO FORM  Office of County Counsel  By: *John L. Myers* (e-sign)  Deputy County Counsel  By: *Erin Cossen*  County Code Services  Date: 10/8/2019 | APPROVED BY THE  NAPA COUNTY  BOARD OF SUPERVISORS  Date: October 22, 2019  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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, DEPUTY

JOSE LUIS VALDEZ, CLERK OF THE BOARD