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 wellbeing 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 recent months, 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 [RESERVED].**

 **8.10.040 Outdoor cultivation of cannabis.**

 **8.10.050 Indoor cultivation of cannabis.**

 **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 purposes as permitted 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”, as defined in California Health and Safety Code Section 11018, as amended by the State Legislature from time to time, means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the following: industrial hemp, as defined in California Health and Safety Code Section 11018.5; or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.

“Commercial cannabis activity” shall have the same definition as in California Health and Safety Code Section 26001 as of the effective date of this chapter and as may be amended.

“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 building.

“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 be: 1) 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. Cultivation within a greenhouse or “hoop house” shall not be considered indoor cultivation.

“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” 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 or a private area of land recognized as a neighborhood park utilized by youth. This definition does not include any state or federal park or forestland.

“Person with an identification card” shall have the same definition as California Health and Safety Code Section 11362.7(c) as of the effective date of this chapter and as may be amended.

“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 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 California Health and Safety Code Section 11362.2 as of the effective date of this chapter and as may be amended.

“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 [RESERVED].**

**8.10.040 Outdoor cultivation of cannabis.**

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 outdoor cultivation of cannabis, except as provided in this section.

B. Persons Permitted to Cultivate Cannabis Outdoors. The following persons may engage in outdoor cultivation of cannabis:

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

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

C. Outdoor Cultivation Standards. Cannabis cultivated outdoors shall be in conformance with the following standards:

1. Outdoor cultivation of cannabis is permitted only on premises with private residences.

2. 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 or any neighboring parcel owned by any person or entity other than the individual performing the cultivation.

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.

3. The maximum number of cannabis plants permitted to be cultivated outdoors shall be as follows:

a. For 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 provisions of this sections regardless of the number of persons twenty-one years of age or older, number of persons with an identification card, or number of primary caregivers, so long as the total number of cannabis plants cultivated indoors, outdoors, or any combination thereof at any private residence does not exceed the quantity of living cannabis plants set forth in California Health and Safety Code Section 11362.2 as of the effective date of this chapter and as may be amended.

1. 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 or portion of a school or containing a park or any portion of a park.

b. For all parcels not within three hundred feet of any school or park as measured by subsection (C)(3)(a)(1) of Section 8.10.040, up to six cannabis plants may be cultivated outdoors at a residence in strict compliance with all other provisions of this chapter, so long as the total number of cannabis plants cultivated indoors, outdoors, or any combination thereof at any private residence does not exceed the quantity of living cannabis plants set forth in California Health and Safety Code Section 11362.2 as of the effective date of this chapter and as may be amended. The limitation set forth in this subsection shall apply regardless of number of persons permitted to cultivate as set forth in subsection (B) of section 8.10.040 residing at the residence.

4. 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 applicable provisions of the code.

5. 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 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.

6. The use of any of the following in connection with outdoor cultivation is prohibited:

a. Any electric light.

b. Any volatile chemical or gas product, including but not limited to carbon dioxide (CO2) and butane.

c. Any fossil fuel-powered electrical generator for cannabis cultivation is prohibited.

d. Any use of pesticide or fertilizer products inconsistent with State law and regulations enforced by the Napa County agricultural commissioner’s office and the California Department of Pesticide Regulation, including, but not limited to, regulations promulgated by Department of Pesticide Regulation rulemaking action number DPR 16-004. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.

7. Any structure or electrical device used for outdoor cultivation shall comply with the California Building, Electrical and Fire Codes as adopted by the county.

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

E. Written Prohibition by Landlord. It shall be unlawful for any person to continue to cultivate cannabis on premises not owned by that person, or in the common area of any multi-unit or multi-family premises, after receiving written notice by the owner that cannabis cultivation is prohibited.

F. Sale or Other Disposition of Cannabis Prohibited. It shall be unlawful for any person cultivating cannabis pursuant to this chapter to sell, offer for sale, furnish, administer, or donate the cannabis permitted 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 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 purposes of this chapter.

**8.10.050 Indoor cultivation of cannabis.**

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 indoor cultivation of cannabis 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 Cannabis Outdoors. The following persons may engage in outdoor cultivation of cannabis:

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

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

C. Indoor Cultivation Standards. Cannabis cultivated indoors shall be in conformance with the following standards:

1. Indoor cultivation of cannabis is permitted only on premises with private residences.

2. Indoor cultivation of cannabis is permitted only within a fully enclosed and secure structure.

3. Indoor cultivation of cannabis shall not exceed the quantity of living cannabis plants set forth in California Health and Safety Code Section 11362.2 as of the effective date of this chapter and as may be amended.

4. Not more than the quantity of plants set forth in California Health and Safety Code Section 11362.2 may be cultivated, whether cultivated indoors or outdoors, within a single private residence or upon the grounds of that private residence at one time. regardless of the number of people, persons with and identification card, and/or primary caregivers residing at the private residence. The limitation set forth in this subsection shall apply regardless of number of persons permitted to cultivate as set forth in subsection (B) of section 8.10.050 residing at the residence.

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

6. Any structure containing the cultivation area shall be secured in a manner that prevents unauthorized entry.

7. Any structure or electrical device used for marijuana cultivation shall comply with the California Building, Electrical and Fire Codes as adopted by the county.

8. The use of any volatile chemical or gas product, including but not limited to carbon dioxide (CO2) and butane, or the use of any fossil fuel-powered electrical generator for cannabis cultivation is prohibited.

9. Any structure used for the cultivation of cannabis must have proper ventilation and odor control filtration to prevent mold damage and to 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.

10. Cannabis 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. Written Prohibition by Landlord. It shall be unlawful for any person to continue to cultivate cannabis on premises not owned by that person, or in the common area of any multi-unit or multi-family premises, after receiving written notice by the owner that cannabis cultivation is prohibited.

E. Sale or Other Disposition of Cannabis Prohibited. It shall be unlawful for any person cultivating cannabis pursuant to this chapter to sell, offer for sale, furnish, administer, or donate the cannabis permitted 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 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 purposes of this chapter.

**8.10.060 Public nuisance.**

Any violation of this chapter is a public nuisance.

**8.10.070 Violations and penalties.**

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.

**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.

 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, Chairman of the

 Board of Supervisors

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| APPROVED AS TO FORMOffice of County CounselBy:  Deputy County CounselBy:  County Code ServicesDate:  | APPROVED BY THE NAPA COUNTYBOARD OF SUPERVISORSDate: Processed By:  Deputy Clerk of the Board | ATTEST: JOSE LUIS VALDEZClerk of the Board of SupervisorsBy:  |

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