

ORDINANCE NO. _____

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, ADDING NEW COUNTY CODE CHAPTER
8.10 TO ESTABLISH REASONABLE STANDARDS FOR THE
GROWING OF PERSONAL AMOUNTS OF MEDICAL MARIJUANA
AND EXPRESSLY BANNING DISPENSARIES**

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, the “Compassionate Use Act of 1996” (the “CUA”), codified as Health and Safety Code Section 11362.5;

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The Proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere”;

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq., and referred to as the “Medical Marijuana Program”) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt[] local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances;

WHEREAS, the CUA expressly anticipated the enactment of additional local legislation, providing, in part: “Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” California Health and Safety Code Section 11362.5;

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. sections 801, et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United

States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes;

WHEREAS, Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from, and/or an affirmative defense to, state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Napa County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation. These risks are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place;

WHEREAS, the Board takes legislative notice that in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court reasoned that neither the CUA nor the MMP grant a “right” of convenient access to marijuana for medical use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives or dispensaries;

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643;

WHEREAS, the Act became effective January 1, 2016 and contains provisions that govern cultivating, processing, transporting, and distributing medical marijuana to qualified patients throughout the state. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code Section 11362.777(c)(4)); and
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code Section 19316(c));

WHEREAS, on November 3, 2015, the Director of Planning, Building, and Environmental Services gave a presentation of key issues of the Act to the Board of Supervisors, after which the Board directed County staff return with an ordinance no later than January 2016 which would impose standards for a limited amount of personal growth of medicinal marijuana, not expressly prohibit deliveries of marijuana, and expressly prohibit dispensaries in the unincorporated areas;

WHEREAS, on April 22, 2009, the California Police Chiefs Association published a “White Paper on Marijuana Dispensaries.” That report documents adverse secondary effects of dispensaries and ancillary crimes occurring in communities with operating dispensaries;

WHEREAS, the Board also takes legislative notice of numerous news reports indicating that cities and counties in California which have allowed the establishment of medical marijuana dispensaries have seen an increase in crime in areas surrounding such dispensaries, illegal cultivation of marijuana and illegal sales and/or use of marijuana by minors and those without serious medical conditions and that it is reasonable to assume that such secondary effects would occur in Napa County should medical marijuana dispensaries be permitted. Other California cities and counties that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries;

WHEREAS, marijuana dispensaries are not allowed in any zoning district in Napa County under principles of permissive zoning;

WHEREAS, an ordinance expressly prohibiting dispensaries within Napa County is appropriate to maintain and protect the public health, safety, and welfare of the residents of Napa County and to maintain the County’s ability to regulate this area under the Act and to prevent the

State from becoming the “sole licensing authority” for cultivation under Health & Safety Code Section 11362.777(c)(4);

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor that may be offensive to many people and detectable far beyond property boundaries if grown outdoors;

WHEREAS, the strong odor of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the Board of Supervisors wishes to expressly prohibit the outdoor cultivation of marijuana within the unincorporated area;

WHEREAS, indoor marijuana cultivation may have potential adverse effects to the structural integrity of the building such as increased fire hazard due to increased use of electricity without reasonable standards for indoor cultivation;

WHEREAS, Napa County wishes to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent negative impacts to property values, to prevent odor created by marijuana plants from impacting adjacent properties, to prevent crime associated with marijuana, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients, minors, or illicit markets; and

WHEREAS, nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Napa County District Attorney, the Attorney General of State of California, or the United States of America.

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

SECTION 1. A new Chapter 8.10 (Medical Marijuana) of the Napa County Code is added to read in full as follows:

Chapter 8.10

MEDICAL MARIJUANA CULTIVATION

Sections:

8.10.010 Purpose and Intent.

- 8.10.020** **Definitions.**
- 8.10.030** **Medical marijuana dispensaries prohibited.**
- 8.10.040** **Outdoor cultivation of marijuana prohibited.**
- 8.10.050** **Indoor cultivation of marijuana.**
- 8.10.060** **Public nuisance.**
- 8.10.070** **Violations and penalties.**

8.10.010 **Purpose and Intent.**

It is the intent of the Board of Supervisors to prohibit the large scale cultivation of marijuana, while regulating the cultivation of limited amounts of marijuana indoors for medical purposes to accommodate the needs of qualified patients and/or their 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. It is also the intent of the Board of the Supervisors that nothing in this chapter shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance or to allow the use or diversion of marijuana for non-medical purposes.

8.10.020 **Definitions.**

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

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

“Cultivation” or “Cultivate” means the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including within a fully enclosed and secure building.

“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 which is authorized to operate and make deliveries.

“Fully enclosed and secure structure” means a space within a building or other structure which 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 qualified patient 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.

“Marijuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; 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. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination as defined 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 through 11362.83 as of the effective date of this chapter and as may be amended, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.

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

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

“Primary caregiver” shall have the same definition as Health and Safety Code Section 11362.7(d) as of the effective date of this chapter and as may be amended.

“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” means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation on a premises or legal parcel located within a zoning district that allows residential uses.

“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.

Marijuana dispensaries, as defined in this chapter, are prohibited within the unincorporated area of the county. No person or entity shall operate, locate or otherwise permit or suffer a medical marijuana dispensary within 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 prohibited.

All outdoor cultivation of marijuana within the unincorporated area of the county is prohibited. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in 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 marijuana.

A. It is hereby declared to be 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 plants 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.

1. Only a qualified patient or a primary caregiver may engage in indoor cultivation of medical marijuana.

2. Residency Requirement. The qualified patient or primary caregiver shall reside full-time on the premises where the indoor cultivation of medical marijuana occurs.

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

1. 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.

2. Indoor cultivation of marijuana is permitted only on parcels with single-family residential units.

3. Marijuana cultivation is permitted only within fully enclosed and secure structures. No cultivation shall occur in apartments, duplexes, triplexes, or other multifamily dwellings.

4. Marijuana cultivation shall not occur in both a detached structure and inside a residence on the same parcel. Only one contiguous cultivation area is allowed per premises. A fully enclosed and secure structure used for the cultivation of marijuana that is separate from the main residence on a premises shall maintain a minimum ten-foot setback from any property line.

5. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry.

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

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

8. Any structure used for the cultivation of medical marijuana must have proper

ventilation and odor control filtration to prevent mold damage and to prevent marijuana plant odors or particles from becoming a public nuisance to surrounding properties or the public. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

9. 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. The cultivation of marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to reasonably objectionable odors.

D. Sale 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 give away the marijuana permitted to be grown under this chapter. A primary caregiver who receives compensation for actual expenses, including reimbursement for actual expenses incurred to cultivate the marijuana such as costs of starter plants or seed, soil, containers, water, lights and electricity, for a qualified patient to enable that person to use marijuana, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be deemed to be the sale of marijuana for purposes of this chapter.

8.10.060 Public nuisance.

Any violation of this chapter is hereby declared to be 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 chapter thereto.

SECTION 2. 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 3. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 4. 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 _____, 2016, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the ___ day of _____, 2016, by the following vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____

 ABSTAIN: SUPERVISORS _____

 ABSENT: SUPERVISORS _____

 ALFREDO PEDROZA, Chairman of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Chris R.Y. Apallas</u> Deputy County Counsel</p> <p>By: <u>Sue Ingalls</u> Code Services</p> <p>Date: <u>January 15, 2016</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>
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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
 GLADYS I. COIL, CLERK OF THE BOARD