

## ORDINANCE NO. 1425

### AN INTERIM ORDINANCE OF THE BOARD OF SUPERVISORS FOR THE COUNTY OF NAPA, STATE OF CALIFORNIA, ADOPTING A TEMPORARY MORATORIUM ON COMMERCIAL CANNABIS ACTIVITY AND OUTDOOR CULTIVATION OF CANNABIS WITHIN THE UNINCORPORATED AREA OF NAPA COUNTY AND DECLARING THE URGENCY THEREOF

#### SECTION 1. Findings and Purpose.

In accordance with California Government Code sections 25123 and 65858, the Board of Supervisors finds and declares that this Ordinance is deemed necessary for the following reasons:

A. In 1996, California voters approved Proposition 215, known as the Compassionate Use Act<sup>1</sup>, which had the goal of “ensur[ing] that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.” The ballot language also included a statement that patients and their primary caregivers who obtain and use cannabis – then termed “marijuana” – for medical purposes upon the recommendation of a physician would not be subject to criminal prosecution or sanction.

B. In 2004, Senate Bill (SB) 420, also known as the Medical Marijuana Program Act<sup>2</sup>, became law and established a statewide, voluntary registry identification card system for medical marijuana patients and their caregivers. SB 420, as amended, recognizes that qualified patients, persons with valid identification cards, and designated primary caregivers may collectively or cooperatively cultivate cannabis. However, the California Supreme Court, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that nothing in the Compassionate Use Act or the Medical Marijuana Program Act expressly or impliedly preempts local ordinances declaring medical cannabis collectives, cooperatives, or dispensaries a prohibited use.

C. Three bills – Assembly Bill (AB) 243, AB 266, and SB 643 – together formed the Medical Marijuana Regulation and Safety Act (MMRSA), which went into effect January 1, 2016. MMRSA established the state’s first comprehensive regulatory system for medical marijuana collectives, dispensaries, and businesses.

D. In response to the passage of MMRSA, on February 2, 2016, Napa County adopted Chapter 8.10 of the Napa County Code. Although titled “Medical Marijuana Cultivation,” Chapter 8.10 regulates some forms of cannabis cultivation broadly, and many of its provisions

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<sup>1</sup> Codified at Cal. Health & Safety Code sec. 11362.5.

<sup>2</sup> Codified at Cal. Health & Safety Code sec. 11362.7, *et seq.*

apply equally to personal cultivation for nonmedical purposes. Chapter 8.10 prohibits all medical marijuana dispensaries in the unincorporated area of Napa County<sup>3</sup> and limits the personal cultivation of marijuana to indoors within a private residence or accessory structure<sup>4</sup>. Chapter 8.10 additionally prohibits all outdoor cultivation of marijuana.<sup>5</sup> However, Chapter 8.10 is silent on commercial cannabis activity other than medical marijuana dispensaries as defined by the code.

E. On November 8, 2016, California voters approved Proposition 64, known as the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). AUMA legalized the personal use of cannabis and provided a framework for state and local regulation of commercial cannabis activity. The personal use provision makes it legal under California law for anyone 21 years of age or older to possess, cultivate, and process up to six cannabis plants per private residence for personal use.<sup>6</sup> AUMA also establishes a state licensing system for commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products, with a deadline of January 1, 2018, for the State to begin issuing licenses for these businesses.<sup>7</sup>

F. Following the voter approval of AUMA, the California Legislature passed SB 94, a budget trailer bill that went into effect on June 27, 2017. SB 94 repealed MMRSA and merged much of that law's regulatory framework with that of AUMA into a single statutory scheme, known as the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), to establish a regulatory framework for both medical and nonmedical commercial cannabis activity. As part of this process, SB 94 also replaced references to "marijuana" with "cannabis," although the definition of the term remains the same. To ensure consistency with state law, this ordinance and future Napa County ordinances and amendments, will use the term "cannabis." The adoption of the term "cannabis" herein, however, shall not invalidate references to "marijuana" in any County ordinance, policy, or regulation. The two terms share the same meaning and are used interchangeably.

G. Under MAUCRSA's statutes for issuing licenses for cannabis activities as amended by SB 94, state licensing authorities, however, cannot issue a license for commercial cannabis activity if an aspect of that activity would violate any local ordinance or regulation.<sup>8</sup> MAUCRSA imposes no limitation on the ability of local jurisdictions to adopt and enforce local ordinances to regulate commercial cannabis businesses, including but not limited to the ability to completely prohibit the establishment or operation of one or more types of commercial cannabis activities that the State would otherwise license under MAUCRSA.<sup>9</sup>

H. Although MAUCRSA outlined a state regulatory framework for licensing commercial cannabis activities, the State has yet to fully establish its regulatory scheme implementing this framework. On November 16, 2017, the State released proposed emergency regulations that

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<sup>3</sup> Napa County Code sec. 8.10.030.

<sup>4</sup> Napa County Code sec. 8.10.050.

<sup>5</sup> Napa County Code sec. 8.10.040.

<sup>6</sup> Cal. Health & Safety Code sec. 11362.2.

<sup>7</sup> Cal. Business & Professions Code sec. 26012 and 26013.

<sup>8</sup> Cal. Business & Professions Code sec. 26055.

<sup>9</sup> Cal. Business & Professions Code sec. 26200.

would be implemented temporarily for the initial issuance of licenses beginning January 1, 2018. The State has not announced or released permanent regulations for future licensing activities.

I. Until final state regulations are officially adopted and enforceable, commercial cannabis activity will be insufficiently regulated and poses a current and immediate threat to the public health, safety, and welfare, including the following potential effects, which can also result from unregulated outdoor cultivation of cannabis:

1. *Increased criminal activity.* A number of factors, including the high monetary value of cannabis plants and the reliance of commercial cannabis establishments on cash transactions, can result in increased crime from commercial cannabis activity. Wholesale prices in the legal cannabis market have ranged over the past 18 months from approximately \$1,400 per pound of dried, processed cannabis to approximately \$1,700. The strong odor of cannabis creates an attractive nuisance, alerting persons to the location of valuable plants, and increasing the risk of burglary, armed robbery, or other violent crimes. Employees and customers of commercial cannabis establishments, as well as those cultivating cannabis for personal use, have also been disproportionately targeted for crime because of the reliance of cannabis business on cash transactions, which can result in large sums of cash on hand. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical use confirmed that the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activities, such as crime or loitering.

The potential for increased crime from unregulated commercial cannabis activity is not limited to retail establishments or cultivation alone. The process of manufacturing cannabis concentrates utilizes a wide variety of solvents and chemicals, many of which are highly flammable and have resulted in explosions, fires, severe injuries, and deaths.

Locally, media outlets have reported on the effects of crime relating to cannabis activities, including:

- On August 3, 2017, a medical marijuana distribution center near the Sonoma County airport in Santa Rosa was robbed at gunpoint, with two assailants stealing a large amount of cash and cannabis.
- On August 20, 2017, an employee of a Santa Rosa marijuana dispensary was robbed at gunpoint of approximately 200 marijuana joints in the dispensary's parking lot.
- On September 12, 2017, a marijuana concentrate manufacturing operation exploded in an industrial building in Willits.
- On October 22, 2017, while many public safety personnel were still responding to wildfires in Napa and Sonoma counties, a fire erupted in a rented room at a Willits-area lodge, injuring two people, one of whom suffered significant burns. The fire apparently was caused by marijuana concentrate manufacturing operation.
- On October 25, 2017, in Santa Rosa, an SUV crashed into another vehicle after fleeing a suspected robbery of marijuana garden.

2. *Detrimental effects on public health.* The availability of cannabis via commercial cannabis establishments also brings several health concerns that can affect individuals of all

ages, according to a public presentation given on September 28, 2017, by Napa County Public Health Officer Karen Relucio, M.D. There is substantial evidence that smoking cannabis by pregnant women is associated with lower birth weight. Additionally, Tetrahydrocannabinol (THC), the primary active chemical in cannabis, can potentially affect fetal brain development and future cognition.

Accidental ingestion by minors can lead to increased emergency room visits and hospitalizations. Following legalization of personal use and commercial sales of cannabis in Colorado, emergency rooms in that state have seen an increase in emergency room visits and hospitalizations. Calls to poison control centers doubled following the beginning of commercial cannabis sales in Colorado in 2014.

Cannabis use by adolescents in Napa County has outpaced the state average. Between 2011 and 2013, Napa County 9<sup>th</sup> graders reported using cannabis at a rate of nearly 8 percentage points higher than the statewide average for 9<sup>th</sup> graders. Similarly, nearly 50 percent of 11<sup>th</sup> graders reported having used cannabis, a rate also approximately 8 percentage points higher than the state average. Overall, 34.3 percent of Napa's youth reported using cannabis, compared with 27.8 percent of youth statewide.

Drugged driving can also pose a public health risk. The State of Washington, which legalized personal use of cannabis in 2012 and implemented a state-regulated commercial sales in 2014, saw the rate of fatal crashes involving drivers who had recently used cannabis double following legalization. Similarly, Colorado experienced an increase in crashes involving cannabis in 2015 – one year after commercial sales began – after seeing a decrease in the years prior.

3. *Adverse environmental impacts.* Other counties have seen an increase in environmental damage due to both indoor and outdoor cannabis cultivation. According to a report issued by the Santa Clara County District Attorney's Office, between 2011 and 2014, the Santa Clara County Sheriff's Office removed 355,005 cannabis plants and seized 1,838 pounds of processed cannabis. In 2016 alone, the Santa Clara County Sheriff's Office removed 100,147 cannabis plants and seized 1,006 pounds of processed cannabis. Illegal outdoor grow sites create profound environmental damage because the growers divert water from waterways, deforest sensitive habitats, cut terraces into hillsides causing runoff and instability, use high levels of unregulated pesticides (some of which are banned in the United States) that contaminate the soil and water, and leave vast amounts of garbage and human waste. Cannabis cultivation can also lead to immediate and severe consequences due to associated fire hazards. In Santa Clara County, a fire lasting about two weeks that burned nearly 4,500 acres and destroyed 28 structures – including 12 homes – was related to a portable generator used in a cannabis cultivation operation.

J. A number of California cities and counties have reported these and other adverse impacts and negative secondary effects from cannabis activities and cultivation sites, including hazardous construction, unsafe electrical wiring, noxious odors and fumes affecting neighboring properties and businesses, and increased crime in and around cultivation sites and dispensaries.

K. Cannabis continues to be listed as a Schedule I drug under the Federal Controlled Substances Act (“CSA”), 21 U.S.C. sec. 801, *et seq.*, and it is illegal to manufacture, distribute, or possess a Schedule I drug under federal law. Drugs listed on Schedule I are considered the most dangerous due to a high potential for abuse and potentially severe psychological and/or physical dependence.

L. As a result of the continuing conflict between State and federal laws, and the unsettled State regulatory framework for commercial cannabis activity, coupled with the evidence demonstrating the public health, safety, and welfare threat that insufficiently regulated cannabis presents to the public, including negative and harmful secondary effects associated with commercial cannabis activity and outdoor cultivation of cannabis, and the inadequate regulations in the Napa County Ordinance Code and zoning ordinances to effectively address the negative secondary impacts associated with commercial cannabis activity and outdoor cultivation of cannabis, the Board finds that commercial cannabis activity and the outdoor cultivation of cannabis present a current and immediate threat to the public health, safety, and welfare. The establishment of commercial cannabis activity in the unincorporated County is a current and immediate threat because of the public health and safety risks created if commercial cannabis businesses are set up in advance of, and after the start of, the issuance of State licenses, beginning in January 2018, without adequate State and local regulations to mitigate for the adverse impacts on the public health, safety, and welfare of the community surrounding the commercial cannabis activity. The outdoor cultivation of cannabis in the unincorporated County is a current and immediate threat because of the public health and safety risks created if outdoor cultivation of cannabis occurs without adequate State and local regulations to mitigate for the adverse impacts on the public health, safety, and welfare of the community surrounding outdoor cultivation of cannabis. The Board further finds that a temporary moratorium on the establishment of commercial cannabis businesses and outdoor cultivation of cannabis in the unincorporated Napa County is warranted so that the Board of Supervisors may review and consider possible amendments to the County’s zoning ordinances to address this threat on a permanent basis.

M. This urgency ordinance shall be effective immediately upon passage by at least a four-fifths vote of the Board of Supervisors in accordance with Government Code sections 25123(d) and 65858(a), as necessary for the immediate preservation of the public peace, health, or safety based upon the declaration of the facts set forth above.

## **SECTION 2. Moratorium.**

### **A. Prohibition on Commercial Cannabis Activity**

The establishment, maintenance, and/or operation of any commercial cannabis activity in the unincorporated area of Napa County is prohibited.

### **B. Prohibition on Outdoor Cultivation of Cannabis**

The outdoor cultivation of cannabis in the unincorporated area of Napa County is prohibited.

C. Applicability

For purposes of this Ordinance, “commercial cannabis activity” shall include all commercial activities as set forth and defined as commercial cannabis activity in Business & Professions Code sec. 26001, as amended by the State Legislature from time to time, including but not limited to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of cannabis or cannabis products.

“Cannabis,” as defined in Health & Safety Code sec. 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 either of the following:

- a) Industrial hemp, as defined in Health & Safety Code sec. 11018.5.
- b) The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.<sup>10</sup>

“Cannabis products,” as defined in Health & Safety Code sec. 11018.1, as amended by the State Legislature from time to time, means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or any edible or topical product containing cannabis or concentrated cannabis and other ingredients.<sup>11</sup>

“Outdoor” and “cultivation” shall have the same meanings as those terms are defined in section 8.10.020 of the Napa County Code.

D. Exceptions

1. This Ordinance will not apply to cannabis cultivation for personal use in compliance AUMA and MAUCRSA, or the cultivation of medicinal cannabis by a qualified patient or primary caregiver as set forth in Business & Professions Code sec. 26033, subdivisions (a) and (b), provided that any such cultivation is in strict compliance with the requirements set forth in subdivision (C) of section 8.10.050 of the Napa County Code and all other applicable state laws and regulations.

2. It is not a violation of this Ordinance for any person employed by a licensed cannabis delivery service to travel on a public road within the unincorporated area of the county for the purpose of delivering cannabis to persons located in a city or county where delivery of cannabis is not prohibited.

3. It is not a violation of this Ordinance for any person employed by a licensed cannabis delivery service to complete a delivery of cannabis or cannabis products to a person in the unincorporated area of the county, provided that the delivery is completed in strict

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<sup>10</sup> Cal. Health & Safety Code sec. 11018.

<sup>11</sup> Cal. Health & Safety Code sec. 11018.1.

compliance with Business & Professions Code sec. 26090, applicable provisions of AUMA and MAUCRSA, and any applicable state regulations.

### **SECTION 3. Compliance with the California Environmental Quality Act.**

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, pursuant to Section 15060(c)(2) of the CEQA Guidelines, the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because this Ordinance prohibits changes in the environment pending the contemplated review of zoning ordinance amendments applicable to commercial cannabis activity and outdoor cultivation of cannabis. Finally, this ordinance adoption is not subject to CEQA under the “general rule” because it can be seen with certainty that there is no possibility the proposed adoption of an ordinance prohibiting new activities may have a significant effect on the environment.

### **SECTION 4. Public nuisance.**

Any violation of this Ordinance is a public nuisance.

### **SECTION 5. Violations and penalties.**

Any violation of this Ordinance shall be subject to abatement and penalties as provided in Chapters 1.20 and 1.28 of the Napa County Code or any successor chapters thereto.

### **SECTION 6. Effective date.**

This Ordinance is declared to be an urgency measure adopted pursuant to Government Code sec. 65858. As set forth in the findings above, this Ordinance is necessary for preserving the public safety, health, and welfare. Pursuant to Government Code sec. 65858, this Ordinance is effective immediately and shall be in full force and effect for 45 days from the date of its adoption. This 45-day period may be extended by the Board of Supervisors in accordance with the provisions of Government Code sec. 65858.

### **SECTION 7. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases will be held unconstitutional, invalid, or unenforceable.

The foregoing Ordinance was introduced, read, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on December 5, 2017, by the following four-fifths vote:

AYES: SUPERVISORS PEDROZA, DILLON, WAGENKNECHT,  
GREGORY and RAMOS

NOES: SUPERVISORS NONE

ABSTAIN: SUPERVISORS NONE

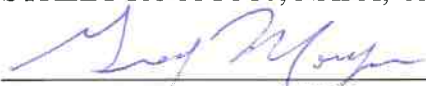
ABSENT: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of the  
State of California

By:   
BELIA RAMOS, Chair of the  
Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>John L. Myers (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>11/30/17</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: December 5, 2017</p> <p>Processed By:  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 12/7/2017.

, DEPUTY *for*  
GLADYS I. COIL, CLERK OF THE BOARD