

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 8.10, AMENDING CHAPTER 18.08, DEFINITIONS, CHAPTER 18.16, CHAPTER 18.20, AND CHAPTER 18.24 OF CHAPTER 18, ZONING, AND ADDING CHAPTER 5.80 OF THE NAPA COUNTY CODE TO IMPLEMENT NEW DEVELOPMENT STANDARDS, PERMITS REQUIREMENTS, AND PROCEDURES REGARDING COMMERCIAL CANNABIS ACTIVITIES, AND MAKE OTHER MINOR CLARIFICATIONS, CORRECTIONS, AND REVISIONS.

The Board of Supervisors of the County of Napa ordains as follows:

SECTION 1. Findings. The Board finds and declares the following:

- A. Adoption of this Ordinance is necessary and desirable to: protect the public health, safety, and environmental resources, ensure safe access to cannabis for adults 18 and over for medical purposes and those 21 and over for all uses, provide a regulatory path to bring to an end an existing underground industry, foster a healthy, diverse and economically viable cannabis industry that contributes to the local economy, provide opportunity to help stabilize farm incomes, enhance enforcement methods for unpermitted and trespass cannabis cultivation, and ensure that environmental, public health, safety and nuisance factors related to the cannabis industry are adequately addressed.
- B. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis as a Schedule I Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, cannabis. There is no federal exemption for the cultivation, manufacture, distribution, dispensation, or possession of cannabis for medical purposes.

The provisions of this Ordinance shall not be construed to protect any person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, use of and/or any other activity associated with controlled substances, or to authorize conduct that is unlawful under State or Federal law. Moreover, cultivation, sale, possession, distribution, and use of cannabis remain violations of Federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to and does not authorize conduct or acts that violate Federal law. Section 2. Chapter 18.08, Definitions, of Chapter 18, Zoning, of the Napa County Code, is hereby amended to add the following new definitions of terms regarding “Cannabis” and related definitions as follows:

Cannabis: All parts of the plant Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, 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, including, but not limited to, separated resin. Cannabis also means medical and non-medical cannabis. Cannabis does not include industrial hemp, as defined in Section 11018.5 of the Health and Safety Code as may be amended. Additionally, the following terms are defined for the purposes of Chapter 35.42.075 (Cannabis Regulations):

Commercial cannabis activity. Any activity, recreational or medicinal, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided in Chapter and Chapter 5.80. Commercial cannabis activity does not include cultivation and processing of cannabis for personal use, as provided under Chapter 8.10.040.

Cultivation. Any activity involving the planting, growing, harvesting, drying, curing, or trimming of cannabis, as well as grading of land to conduct any such activity. Cultivation includes outdoor cultivation, indoor cultivation, and mixed light cultivation as follows:

a. Indoor cultivation. The cultivation of cannabis within a structure using exclusively artificial light.

b. Outdoor cultivation. The cultivation of cannabis, outside of a structure, without the use of artificial lighting in the canopy area at any point in time. Outdoor cultivation includes cultivation within a hoop structure that is erected for less than 6 weeks per year. No artificial lighting is permissible for outdoor cultivation, including within hoop structures.

c. Mixed-light cultivation. The cultivation of cannabis in a greenhouse, glasshouse, conservatory, hothouse, or other similar structure using light deprivation and/or one of the artificial lighting models, excluding hoop structures.

Cannabis Cultivation Site. A location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

Cannabis Distribution. The procurement, sale, and transport of cannabis and cannabis products between licensees.

Cannabis Distributor. A licensee that conducts the procurement, sale, or transport of cannabis and cannabis products between licensees.

Cannabis Licensee. A person holding a license under Section 26001 of the Business & Professions Code.

Cannabis Manufacturer. A cannabis licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

Cannabis Nursery. A cannabis licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

Cannabis Processing. All activities associated with drying, curing, trimming, storing, packaging, and labeling of nonmanufactured cannabis products.

Cannabis Retail. The retail sale and delivery of cannabis or cannabis products to customers.

Cannabis Retailer. A Cannabis Licensee that conducts the retail sale or delivery of cannabis or cannabis products to consumers.

Cannabis Testing Laboratory. A Laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products as defined by Business & Professions Code Section 26001.

Canopy. Canopy means the designated area(s) at a licensed premise, that will contain mature plants at any point in time, as follows:

1. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all areas that will contain mature plants, including all of the space(s) within the boundaries.
2. Canopy may be non-contiguous, but each unique area included in the total canopy calculation shall be separated by an identifiable boundary that may include, but is not limited to: interior walls, shelves, greenhouse walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots; and
3. If mature plants are being cultivated using a shelving technique, the surface area of each shelf level shall be included in the calculation of total canopy.

SECTION 3. Chapter 18.08, Definitions, of Chapter 18, Zoning, of the Napa County Code, is hereby amended to read as follows:

Chapter 18.08 - DEFINITIONS

18.08.040 - Agriculture.

"Agriculture" means the raising of crops or livestock and includes the following:

- A. Growing and raising trees, vines, shrubs, berries, vegetables, nursery stock, hay, grain and similar food crops and fiber crops including less than one acre of outdoor cultivation of cannabis as provided in Chapter 5.80;
- B. Grazing of livestock and feeding incidental thereto;
- C. Animal husbandry, including, without limitation, the breeding and raising of cattle, sheep, horses, goats, pigs, rabbits and poultry and egg production, except as provided in subsection (G) of this section;
- D. Farmworker housing as defined in Section 18.08.294 and is also consistent with the California Employee Housing Act;
- E. Sale of agricultural products grown, raised or produced on the premises, except that commercial cannabis grown on the premises may only be sold to a cannabis manufacturer, distributor, or retailer;
- F. Farm management uses meeting all of the standards in subsections (F)(1) through (F)(6) of this section. Farm management shall mean the operation, maintenance and storage of farm machinery, equipment, vehicles and supplies used exclusively for agricultural cultivation and harvesting where all machinery, equipment, vehicles and supplies are leased or owned and operated by the farm manager whether that manager is an owner, tenant, or agricultural contractor, and regardless of whether properties managed are contiguous or under similar ownership, provided that at least seventy-five percent of the managed acres are within Napa

County. Farm management shall not include manufacturing for sale or retail sales of any kind and shall not include businesses devoted to equipment storage, rental or repair rather than farming. Farm management shall not include the operation, maintenance or storage of equipment used for construction of structures, even if those structures are in support of agriculture;

1. Offices used for farm management shall meet the definition of accessory uses in Section 18.08.020;
2. Farm management activities established or expanded after June 30, 2006, alone or in combination with any wineries subject to Section 18.104.220 shall not occupy more than fifteen acres or twenty-five percent of the parcel size, whichever is less;
3. No single farm management building or structure newly constructed or expanded after June 30, 2006 shall exceed five thousand gross square feet. Multiple smaller buildings are permitted as long as they conform to the lot coverage standard in subsection (F)(2) above;
4. Uncovered storage areas shall be screened from preexisting residences on adjacent parcels and from designated public roads defined in Chapter 18.106. Screening shall generally consist of evergreen landscape buffers;
5. Farm managers shall possess all applicable local, state and federal permits and licenses;
6. All exterior lighting, including landscape lighting, for farm management uses shall be shielded and directed downward, located as low to the ground as possible, and the minimum necessary for security, safety, or operations. Additionally, motion detection sensors must be incorporated to the greatest extent practical. No flood-lighting or sodium lighting of buildings is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Prior to issuance of any building permit for construction, two copies of a separate detailed lighting plan shall accompany building plans showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for department review and approval.

G. Agriculture shall not include the raising and keeping of more than twenty-five roosters per acre, up to a maximum of one hundred roosters per legal parcel, except as may be permitted pursuant to Chapter 6.18.

H. Agriculture shall include the following, but only upon grant of a use permit pursuant to Section 18.124.010, or unless previously issued a small winery certificate of exemption pursuant to subsection (H) of Section 18.16.020 and subsection (I) of Section 18.20.020, or legal existence as a winery prior to July 31, 1974 as provided in subsection (G) of Section 18.16.020 and subsection (H) of Section 18.20.020:

1. Production and processing of agricultural products, including agricultural processing facilities, except cannabis processing accessory to cannabis cultivation, in a structure smaller than 1,500 square feet, which is a permitted use as Provided in Chapter 5.80; and
2. Marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use.

(Ord. 1285 § 1, 2006; Ord. 511 § 1 (part), 1976; prior code § 12019)

(Ord. No. 1349, § 1, 10-26-2010, eff. 12-26-2010; Ord. No. 1381, § 2, 3-12-2013, eff. 4-11-2013; Ord. No. 1420, § 1, 5-9-2017)

SECTION 4.

Chapter 18.16 of Chapter 18, Zoning, of the Napa County Municipal Code is amended to read as follows:

Chapter 18.16 - AP AGRICULTURAL PRESERVE DISTRICT

Sections:

18.16.010 - Intent of classification.

The AP district classification is intended to be applied in the fertile valley and foothill areas of Napa County in which agriculture is and should continue to be the predominant land use, where uses incompatible to agriculture should be precluded and where the development of urban-type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic and aesthetic attributes and assets of the county.

(Ord. 511 § 1 (part), 1976: prior code § 12200)

18.16.020 - Uses allowed without a use permit.

The following uses shall be allowed in all AP districts without use permits:

- A. Agriculture,
- B. Outdoor cultivation of cannabis, not exceeding one acre as provided in Chapter 5.80;
- B. One single-family dwelling unit per legal lot;
- C. Residential care facilities (small);
- D. Family day care homes (small);
- E. Family day care homes (large), subject to Section 18.104.070;
- F. One guest cottage, provided that all of the conditions set forth in Section 18.104.080 are met;
- G. Wineries and related accessory uses and structures which legally existed prior to July 31, 1974 without the requirement that a use permit be issued, and which have not been abandoned; provided, that the extent of such uses and structures have been determined in accordance with the procedure set forth in Section 18.132.050. No expansion beyond those which existed prior to July 31, 1974 may occur unless specifically authorized by use permit, issued in conformance with the applicable provisions of this title;
- H. Small wineries which were issued a certificate of exemption prior to the date of adoption of the ordinance codified in this section, and used the certificate in the manner set forth in Section 18.124.080 before the effective date of the ordinance codified in this section in conformance with the applicable certificate of exemption, Section 18.08.600 of this code, and any resolution adopted pursuant thereto;
- I. Wineries and related accessory uses which have been authorized by use permit and used in a manner set forth in Section 18.124.080 or any predecessor section; provided, that no expansion of uses or structures beyond those which were authorized by a use permit or modification of a use permit issued prior to the effective date of the ordinance codified in this section shall be permitted except as may be authorized by a subsequent use permit issued pursuant to this title;
- J. Minor antennas meeting the requirements of Sections 18.119.240 through 18.119.260;

- K. Telecommunication facilities, other than satellite earth stations, that meet the performance standards specified in Section 18.119.200, provided that prior to issuance of any building permit, or the commencement of the use if no building permit is required, the director or his/her designee has issued a site plan approval pursuant to Chapter 18.140; and
- L. Farmworker housing (i) providing accommodations for six or fewer employees, or (ii) consisting of no more than thirty-six beds in group quarters or twelve units designed for use by a single household, and otherwise consistent with Health and Safety Code Sections 17021.5 and 17021.6, or successor provisions, subject to the conditions set forth in Sections 18.104.300 and 18.104.310, as applicable.
- M. Accessory cannabis processing in connection with cannabis cultivation in a structure of less than 1,500 square feet in size as provided in Chapter 5.80.

(Ord. No. 1323, § 5, 6-23-2009; Ord. 1097 § 12, 1996; Ord. 947 § 10, 1990; Ord. 816 § 6, 1986; Ord. 815 § 4, 1986; Ord. 629 § 2, 1980; Ord. 511 § 1 (part), 1976; prior code § 12201)

18.16.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all AP districts, but only upon grant of a use permit pursuant to Section 18.124.010:

- A. Farmworker housing and seasonal farmworker centers conforming to Section 18.104.300 or 18.104.310, unless exempt from a use permit requirement under subsection (M) of Section 18.16.020;
- B. Facilities, other than wineries, for the processing of agricultural products, including cannabis, grown or raised on the same parcels or contiguous parcels under the same ownership;
- C. Kennels and veterinary facilities;
- D. Feed lots;
- E. Noncommercial wind energy and conversion systems;
- F. Wineries, as defined in Section 18.08.640;
- G. The following uses in connection with a winery:
 1. Crushing of grapes outside or within a structure,
 2. On-site aboveground disposal of wastewater generated by the winery,
 3. Aging, processing and storage of wine in bulk,
 4. Bottling and storage of bottled wine and shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in Section 18.08.370,
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of Section

18.104.250 regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;

- H. The following uses, when accessory to a winery:
 - 1. Tours and tastings, as defined in Section 18.08.620,
 - 2. Display, but not sale, of art,
 - 3. Display, but not sale, of items of historical, ecological or vinicultural significance to the wine industry,
 - 4. Sale of wine-related products,
 - 5. Child day care centers limited to caring for children of employees of the winery;
- I. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in Section 18.119.200;
- J. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- K. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility;
- L. Farm management uses not meeting one or more of the standards contained in subsections (F)(2), (F)(3), and (F)(4) of Section 18.08.040.

(Ord. No. 1420, § 2, 5-9-2017; Ord. No. 1340, § 3, 5-11-2010; Ord. No. 1323, § 6, 6-23-2009; Ord. 1285 § 2, 2006; Ord. 1275 § 1, 2006; Ord. 1246 § 6, 2004; Ord. 1097 § 13, 1996; Ord. 1040 § 5, 1993; Ord. 947 § 11, 1990; Ord. 757 § 1, 1983; Ord. 511 § 1 (part), 1976; prior code § 12202)

SECTION 5.

Chapter 18.20 of Chapter 18, Zoning, of the Napa County Municipal Code is amended to read as follows:

Chapter 18.20 - AW AGRICULTURAL WATERSHED DISTRICT

Sections:

18.20.010 - Intent of classification.

The AW district classification is intended to be applied in those areas of the county where the predominant use is agriculturally oriented, where watershed areas, reservoirs and floodplain tributaries are located, where development would adversely impact on all such uses, and where the protection of agriculture, watersheds and floodplain tributaries from fire, pollution and erosion is essential to the general health, safety and welfare.

(Ord. 538 § 4, 1977; prior code § 12230)

18.20.020 - Uses allowed without a use permit.

The following uses shall be allowed in all AW districts without use permits:

- A. Agriculture, including outdoor cultivation of cannabis, not to exceed one acre as provided in Chapter 5.80;
- B. One single-family dwelling unit per legal lot;
- C. A second unit, either attached to or detached from an existing legal residential dwelling unit, providing that all of the conditions set forth in Section 18.104.180 are met;
- D. Residential care facilities (small);
- E. Family day care homes (small);
- F. Family day care homes (large), subject to Section 18.104.070;
- G. One guest cottage, provided that all of the conditions set forth in Section 18.104.080 are met;
- H. Wineries and related accessory uses and structures which legally existed prior to July 31, 1974 without the requirement that a use permit be issued, and which have not been abandoned; provided, that the extent of such uses and structures have been determined in accordance with the procedure set forth in Section 18.132.050. No expansion beyond those which existed prior to July 31, 1974 may occur unless specifically authorized by use permit, issued in conformance with the applicable provisions of this title;
- I. Small wineries which were issued a certificate of exemption prior to the date of adoption of the ordinance codified in this chapter, and used the certificate in the manner set forth in Section 18.124.080 before the effective date of the ordinance codified in this chapter, in conformance with the applicable certificate of exemption, Section 18.08.600, and any resolution adopted pursuant thereto;
- J. Wineries and related accessory uses which have been authorized by use permit and used in a manner set forth in Section 18.124.080 or any predecessor section; provided, that no expansion of uses or structures beyond those which were authorized by a use permit or modification of a use permit issued prior to the effective date of the ordinance codified in this chapter shall be permitted except as may be authorized by a subsequent use permit issued pursuant to this title;
- K. Minor antennas meeting the requirements of Sections 18.119.240 through 18.119.260;
- L. Telecommunication facilities, other than satellite earth stations, that meet the performance standards specified in Section 18.119.200, provided that prior to issuance of any building permit, or the commencement of the use if no building permit is required, the director or his/her designee has issued a site plan approval pursuant to Chapter 18.140;
- M. Hunting clubs (small) as defined in Chapter 18.08;
- N. Overnight lodging in public parks or in structures, at the density and intensity of use (number of units) lawfully developed for such purpose prior to October 13, 1977, provided that such use has a currently-valid certificate of the extent of legal nonconformity pursuant to Section 18.132.050;
- O. Any recreational vehicle park or campground and their accessory and related uses which have been authorized by use permit and used in a manner set forth in Section 18.124.080 or any predecessor section; provided that no expansion of uses or structures beyond those which were specifically authorized by a use permit or modification of a use permit issued prior to May 10, 1996, shall be permitted except as may be authorized by a subsequent permit issued pursuant to this title;
- P. Floating dock which complies with all the following:

1. Is accessory to a residential or agricultural use otherwise permitted by this chapter without a use permit,
 2. Any portion located on a navigable waterway is determined by the Napa County Flood Control and Water Conservation District engineer to not obstruct seasonal flood flows, and
 3. In operation is located adjacent and parallel to, and does not exceed in length the water frontage of the legal parcel or contiguous legal parcels owned by the owner of the floating dock;
- Q. Maintenance and emergency repairs of legally-created levees, subject to compliance with Chapter 16.04 of this code;
- R. Farmworker housing (i) providing accommodations for six or fewer employees, or (ii) consisting of no more than thirty-six beds in group quarters or twelve units designed for use by a single household, and otherwise consistent with Health and Safety Code Sections 17021.5 and 17021.6, or successor provisions, subject to the conditions set forth in Sections 18.104.300 and 18.104.310, as applicable; and
- S. Quasi-private recreation uses and facilities, as defined in Section 18.08.494, conforming to the standards in Section 18.104.350, and provided that they do not adversely impact adjacent agriculture.
- T. Accessory cannabis processing in connection with cannabis cultivation in an existing structure of less than 1,500 square feet in size as provided in Chapter 5.80.

(Ord. No. 1326, § 6, 9-22-2009; Ord. No. 1323, § 7, 6-23-2009; Ord. 1144 § 2, 1998; Ord. 1105 § 4, 1996; Ord. 1097 § 14, 1996; Ord. 947 § 13, 1990; Ord. 900 § 2, 1988; Ord. 867 § 11, 1988; Ord. 816 § 7, 1986; Ord. 815 § 5, 1986; Ord. 784 § 1, 1984; Ord. 629 § 3, 1980; Ord. 538 § 4, 1977; prior code § 12231)

18.20.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all AW districts, but only upon grant of a use permit pursuant to Section 18.124.010:

- A. Parks and rural recreation uses and facilities as defined in Chapter 18.08, conforming to the standards in Chapter 18.104;
- B. Farmworker housing and seasonal farmworker centers conforming to Section 18.104.300 or 18.104.310, unless exempt from a use permit requirement under subsection (R) of Section 18.20.020;
- C. Facilities, other than wineries, for the processing of agricultural products, including cannabis, grown or raised on the same parcels or contiguous parcels under the same ownership;
 - i. Cannabis processing facilities in a structure larger than 1,500 square feet in size as provided in Chapter 5.80.
- D. Kennels, horse boarding and/or training stables, veterinary facilities, and wildlife rescue centers;
- E. Feed lots;
- F. Sanitary landfill sites;

- G. Noncommercial wind energy and conversion systems;
- H. Wineries, as defined in Section 18.08.640;
- I. The following uses in connection with a winery:
 - 1. Crushing of grapes outside or within a structure,
 - 2. On-site, aboveground disposal of wastewater generated by the winery,
 - 3. Aging, processing and storage of wine in bulk,
 - 4. Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 - 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in Section 18.08.370,
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of Section 18.104.250 regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;
- J. The following uses, when accessory to a winery:
 - 1. Tours and tastings, as defined in Section 18.08.620,
 - 2. Display, but not sale, of art,
 - 3. Display, but not sale, of items of historical, ecological or vinicultural significance to the wine industry,
 - 4. Sale of wine-related products,
 - 5. Child day care centers limited to caring for children of employees of the winery;
- K. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in Section 18.119.200;
- L. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- M. Campgrounds on public lands conforming to the standards in Chapter 18.104;
- N. Hunting clubs (large) as defined in Chapter 18.08 and subject to the standards in Chapter 18.104;
- O. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility; and
- P. Farm management uses not meeting one or more of the standards contained in subsections (F)(2), (F)(3), and (F)(4) of Section 18.08.040.

(Ord. 1285 § 3, 2006; Ord. 1275 § 2, 2006; Ord. 1246 § 7, 2004; Ord. 1105 §§ 5, 6, 1996; Ord. 1101 § 6, 1996; Ord. 1097 § 15, 1996; Ord. 1040 § 6, 1993; Ord. 947 § 14, 1990; Ord. 757 § 4, 1983; Ord. 538 § 4, 1977; prior code § 12232)

(Ord. No. 1323, § 8, 6-23-2009; Ord. No. 1326, § 7, 9-22-2009; Ord. No. 1340, § 4, 5-11-2010; Ord. No. 1370, § 13, 3-20-2012; Ord. No. 1420, § 3, 5-9-2017)

SECTION 6.

Chapter 18.24 of Chapter 18, Zoning, of the Napa County Municipal Code is amended to read as follows:

18. 24 AV AIRPORT DISTRICT

18.24.020 - Uses allowed without a use permit.

The following uses shall be allowed in all AV districts without a use permit:

- A. Agriculture;
- B. Cannabis laboratory testing facilities as provided in Chapter 5.80;
- C. The following uses at the Napa County airport, when in conformance with the airport master plan approved on December 1, 1976, and as amended by the county:
 - 1. Paved runways, taxiways and parking aprons,
 - 2. Lighting, (radar and radio) navigation and communication facilities,
 - 3. Hangars for aircraft storage, service, and repair,
 - 4. Limited passenger and freight terminal facilities within the existing airport terminal,
 - 5. Aircraft rentals and charter services,
 - 6. Avionics sales, service and repair,
 - 7. Aircraft upholstery services,
 - 8. Aviation insurance services,
 - 9. Aircraft maintenance and repair services,
 - 10. Emergency fire protection and crash/fire/rescue services;
- D. The following uses at Parrett Field (Angwin Airport) when in conformance with the airport layout plan included in the Napa County airport land use compatibility plan approved on April 22, 1991, and as duly amended thereafter:

1. Paved runways, taxiways and parking aprons;
2. Lighting, (radar and radio) navigation and communication facilities;
3. Hangars for aircraft storage, service and repair;
4. Aircraft rentals and charter services;
5. Aircraft maintenance and repair services;
6. Emergency fire protection and crash/fire/rescue services;

E. Minor antennas meeting the requirements of Sections 18.119.240 through 18.119.260;

F. Telecommunication facilities, other than satellite earth stations, that meet the performance standards specified in Section 18.119.200, provided that prior to issuance of any building permit, or the commencement of the use if no building permit is required, the director or his/her designee has issued a site plan approval pursuant to Chapter 18.140.

Section 7. Chapter 8.10, Medical Cannabis Cultivation, is hereby amended to read as follows:

8.10.010 - Purpose and intent.

It is the intent of the board of supervisors to ~~prohibit the large-scale cultivation of marijuana in the unincorporated area of the county, while regulating~~ regulate the cultivation of limited amounts of ~~marijuana~~ cannabis, both outdoor for commercial purposes and indoors for ~~medical~~ personal purposes to accommodate the needs of qualified patients 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.

(Ord. No. 1410, § 1, 2-2-2016)

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~~ cannabis plants on the premises.

"Cultivation" or "cultivate" means the planting, growing, harvesting, drying, processing or storage of one or more ~~marijuana~~ cannabis 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~~ cannabis 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~~ cannabis 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) 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~~ Cannabis" 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~~ cannabis" shall mean ~~marijuana~~ cannabis 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~~ Cannabis Program).

"Outdoor" means any location 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 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 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" 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.

(Ord. No. 1410, § 1, 2-2-2016)

8.10.030 - Medical ~~marijuana~~ cannabis dispensaries prohibited.

~~Marijuana~~ Cannabis 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~~ cannabis dispensary to occupy or use a location, building, structure or vehicle.

(Ord. No. 1410, § 1, 2-2-2016)

~~8.10.040 – Outdoor cultivation of marijuana 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.~~

~~(Ord. No. 1410, § 1, 2-2-2016)~~

8.10.040 – Personal indoor cultivation of ~~marijuana~~ 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 cultivation of ~~marijuana~~ 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 ~~Marijuana~~ Cannabis Indoors. Only a qualified patient or a primary caregiver may engage in indoor cultivation of medical ~~marijuana~~ cannabis. The indoor cultivation shall be restricted to the premises containing the primary residence of the qualified patient or primary caregiver. Outdoor cultivation for personal use is prohibited.

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

1. Indoor cultivation of ~~marijuana~~ cannabis is permitted only on premises with single-family residential structures.
2. ~~Marijuana~~ Cannabis 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~~ cannabis 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~~ Cannabis cultivation shall not occur in both a detached structure and inside a residence on the same parcel.

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

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

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

8. The use of any gas products (CO 2 , butane, etc.) or fossil fuel-powered electrical generators for ~~marijuana~~ cannabis cultivation is prohibited.

9. Any structure used for the cultivation of medical ~~marijuana~~ cannabis 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~~ 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. Sale or Other Disposition of Medical ~~Marijuana~~ Cannabis Prohibited. It shall be unlawful for any person cultivating medical ~~marijuana~~ cannabis pursuant to this chapter to sell, offer for sale, furnish, administer, or donate the ~~marijuana~~ cannabis 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~~ cannabis, such as costs of starter plants or seed, soil, containers, and utilities, from a qualified patient to enable that person to use ~~marijuana~~ cannabis, shall not, on the sole basis of those payments, be deemed to be a seller of ~~marijuana~~ cannabis for purposes of this chapter.

(Ord. No. 1410, § 1, 2-2-2016)

8.10.050 - Public nuisance.

Any violation of this chapter is a public nuisance.

(Ord. No. 1410, § 1, 2-2-2016)

8.10.060 - 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.

(Ord. No. 1410, § 1, 2-2-2016)

Section 8. Title 5, Business Taxes, Licenses and Regulations, of the Napa County Municipal Code is hereby amended to add new Chapter 5.80, Cannabis Regulations, to read as follows:

5.80 Cannabis Regulations

5.80.010. Purpose and applicability.

1. Purpose. This Section establishes standards that are designed to protect the public health, safety, and welfare, and enact strong and effective regulatory and enforcement controls, as a result of an effort to combat the illegal market while putting the County of Napa in compliance with State law, protect neighborhood character, and minimize potential for negative impacts on people, communities and the environment, by establishing minimum land use requirements for medicinal and adult use cannabis activities including cultivation and processing.

2. Applicability. The standards of this Section shall apply to all commercial cannabis activities, as defined in Chapter 18.08 (Definitions), and as may be permitted in compliance with the approval of the applicable permit identified in the regulations for the listed zones. Commercial cannabis activities shall only be permitted in the AR/AP, AW/AWOS, and AV zoning districts in compliance with Chapter 18 (Zoning Districts). Commercial cannabis activities shall also comply with the following:

a. All commercial cannabis activities shall comply with the provisions of this Section, as well as all applicable State laws.

b. Nothing in this Section is intended, nor shall it be construed, to allow persons to engage in conduct that endangers others or causes a public nuisance.

c. Nothing in this Section is intended, nor shall it be construed, to exempt the cultivation of cannabis from compliance with all other applicable County zoning and land use regulations, as well as other applicable provisions of the County Code, State and local cannabis licensing requirements, or compliance with any applicable State laws.

d. The provisions of this Section shall not be construed to protect any person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, use of and/or any other activity associated with controlled substances, or to authorize conduct that is unlawful under State or Federal law. Moreover, cultivation, sale, possession, distribution, and use of cannabis remain violations of Federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to, and does not authorize conduct or acts that violate Federal law. Persons engaged in cannabis activities assume any and all risk and any and all liability that may arise or result under State and Federal laws from the cultivation, sale, possession, distribution, use of cannabis, and/or any other cannabis activity.

3. Cannabis activities already are highly regulated by both the state and federal governments, and their regulation of cannabis activities is subject to rapid changes. The Board of Supervisors retains all of

its statutory planning and zoning authority concerning cannabis activities. For example, even if the Ordinance adding this section becomes operative, the Board of Supervisors may still take action(s) later to change the zoning of cannabis activities.

4. Persons engaged in cannabis activities assume all risk and any and all liability that may arise or result under State and Federal laws from the cultivation, sale, possession, distribution, use of cannabis and/or any other cannabis activity. All persons engaging in commercial cannabis activity under this Ordinance agree to waive any claims of liability for damages against the County of Napa and its contractors and agree to indemnify the County of Napa and its contractors from and against any claims, suits, or liabilities, arising out of activities undertaken based on the issuance of any permit, clearance, or permitted activity under this Ordinance in accordance with Chapter 1.30

5.80.020. Allowed uses and permit requirements.

1. Permit requirement for commercial cannabis activities.
 - a. Allowed uses. Commercial cannabis activities may only occur in compliance with the applicable zoning restrictions for the premise for which they are proposed.
 - b. Permit requirements. Commercial cannabis activities for which a permit is required, according to the applicable zoning restrictions for the premise on which they are proposed, may only occur in compliance with the approval of the applicable permit. The required permit shall be obtained prior to the commencement of the cannabis activity. All conditions of the permit for the cannabis activity shall be satisfied prior to the commencement of the cannabis activity or as otherwise specified in the conditions of the permit.
2. Permit Requirements for commercial activities.
 - a. Cultivation. Commercial cannabis cultivation are permitted according to the following zoning categories to correspond to State license types and subject to the requisite permit to establish each use:
 - i. Type 1: Outdoor cultivation of less than 5,000 square feet of total canopy shall be permitted in the AR/AP and AW/AWOS zones.
 - ii. Type 2: Outdoor cultivation between 5,001 square feet and 10,000 square feet of total canopy shall be permitted in the AR/AP and AW/AWOS zones.
 - iii. Type 3: Outdoor cultivation of between 10,001 square feet and 44,360 square feet (one acre) of total canopy shall be permitted in the AR/AP and AW/AWOS zones.
 - b. Hoop houses for cultivation may be erected for no more than six weeks during germination.

- c. No artificial lighting is permissible for outdoor cultivation, including within hoop structures. Hoop houses must be screened during their use in accordance with Section 5.80.30(8).
- d. Processing. Commercial cannabis processing uses are permitted according to the following zoning categories and subject to the requisite permit to establish the use:
 - i. Accessory processing on a parcel with commercial cannabis cultivation, in an existing structure smaller than 1,500 square feet, shall be a permitted use in the AR/AP and AW/AWOS zones.
 - ii. Accessory processing in connection with commercial cannabis cultivation in a structure larger than 1,500 square feet, or construction of a new processing facility, shall be permitted in the AW/AWOS zones with an administrative permit in accordance with Chapter 18.126 and the issuance of a building permit.
 - iii. Processing must be accessory to cultivation on the parcel. Processing structures may only be used for seasonal processing of cannabis for no more than 6 months and storage of farm equipment. Use of the processing facilities permitted by this Chapter for anything other than cannabis processing or storage of farm equipment will constitute a violation of this Chapter, subject to the remedies and penalties in Section 5.80.40.
- e. Testing. Commercial cannabis laboratory testing uses are permitted in the AV zone and in conformance with Chapter 18.24.

5.80.30 General commercial cannabis activities development standards.

- 1. Schools. The cannabis activity shall not be located within 600 feet from a school a school providing instruction in kindergarten or any grades ones through 12, day care center, or youth center. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the lot on which the sensitive receptor is located to the site of the cannabis activity.
- 2. Water source. No commercial cannabis cultivation shall rely on municipal water as its water source.
- 3. Timber Conversion/Timber Harvest Plans. No commercial cannabis activity shall rely on the granting of timber conversion or timber harvest permits. Commercial cannabis activity shall not be allowed on any parcel where timber conversion or timber harvest permits would be required to comply with State regulations.
- 4. Wineries. Commercial cannabis activity shall not be allowed on any parcel where a licensed winery is operating.
- 5. Non-agricultural lands. Commercial cannabis cultivation is prohibited on lands not designated as agricultural.

6. American Vinicultural Area (“AVA”) and sub-AVA designations. Commercial cannabis activities operating in reliance on this chapter may be designated according to the Napa Valley AVA and the 16 sub –AVAs, as may exist from time to time, if 100% of the cannabis cultivated or processed is from premises located within the AVA or sub-AVA so designated.
7. Fencing and Security Plan. All cultivation and processing projects shall prepare and submit to the Department a Fencing and Security Plan demonstrating ample security and screening of the commercial cannabis activity. The standards of this Section shall be in addition to Chapter 18.104.270 (Fences). Where there are conflicts between the standards in this Section and any other applicable standards of this Article, the standards in this Section shall control. The Plan shall be implemented prior to the issuance of final building and/or grading inspection and/or throughout operation of the project, as applicable. The Fencing and Security Plan shall include the following:
 - a. The Fencing Plan shall depict typical fencing details, including location, fence type, and height.
 - b. All fencing and/or walls shall be made of material that blends into the surrounding terrain and shall minimize any visual impacts.
 - c. Where fencing would separate an agricultural area from undeveloped areas with native vegetation, said fencing shall use material or devices that are not injurious to wildlife and enable wildlife passage.
 - d. Prohibited fencing materials include razor wire.
 - e. The fence shall include lockable gate(s) that are locked at all times, except for during times of active ingress/egress.
 - f. No visual markers indicating that cannabis is cultivated on the site shall be visible from offsite.
 - g. The security plan shall include, at a minimum, perimeter security system, lighting, 24-hour video surveillance, with 30-day archiving of video that covers all areas of the cannabis operations, employee training on company policies and cannabis laws, prevention of product diversion, theft, and loss. Security lighting shall be shielded, directed downward, and located as low to the ground as possible. Motion detection sensors should be incorporated where practical to maintain security. Lighting shall otherwise conform to Section 18.08.040.
8. Landscape Plan and Screening Plan. All cultivation projects shall submit a Landscape Plan and Screening Plan to the Planning Department.

All cultivation shall be screened to the maximum extent feasible to avoid being seen from public places, including, but not limited to, public rights of way, and shall comply with Chapter 18.118 (Water Conservation Regulations for Landscape Designs), and the standards listed below. The Landscape Plan and Screening Plan shall be implemented prior to the issuance of final building and/or grading inspection and/or throughout operation of the

project as applicable. The Landscape Plan and Screening Plan shall comply with the following requirements:

- a. Said Plan(s) shall include landscaping which, within five years, will reasonably screen the view of any new structure, including hoop houses and agricultural accessory structures, and on-site parking areas from the nearest public road(s).
- b. All landscaping shall be installed prior to initiating the cultivation activities that are subject to the permit for the cultivation activities.
- c. If, due to site-specific conditions (e.g., slopes), an applicant believes that screening cannot be fully achieved, the applicant shall submit a Landscape Plan and Screening Plan showing what portion can be screened and written documentation, which sets forth the reasons other portions cannot be screened.

9. Environment and Water Standards.

- a. In accordance with Napa County Groundwater Conservation Ordinance, Municipal Code Section 13.15, all cannabis cultivation projects shall require a Water Availability Analysis.
- b. Any cultivation or processing project which requires earthmoving, grading, or other ground disturbance shall comply with Chapter 18.108, Conservation Regulations.
- c. Cultivation projects shall comply with all Agricultural Best Practices, as may be developed by the Agriculture Commissioner from time to time.
- d. Cultivation projects shall comply with all Cultivation Best Management Practices as developed by the California Department of Food & Agriculture.
- e. All cannabis projects will comply with local regulations and State law, including laws relating to resource conservation.

5.80.40 Administrative Remedies. This Section is not intended to, and does not, establish any criminal liability. This Section provides administrative remedies for any violation of this Section related to all cannabis uses. A violation of this Section shall be subject to all civil enforcement and abatement methods, including the administrative procedure set forth in Section 1.20 of the County Code. The remedies provided for in this Section shall be cumulative and not exclusive.

1. Administrative Citations. In addition to all other legal remedies, criminal or civil, which may be pursued by the county to address any violation of the County Code, this subsection provides for administrative citations, adopted pursuant to the authority conferred by the Government Code, including Section 53069.4. Violations of any provision of the County Code, permit, license or approvals are subject to administrative citation. Each act, omission, or condition may be cited as a separate violation and each violation that continues, exists, or occurs on more than one day may constitute a

separate violation on each day, at the discretion of the agency having jurisdiction.

2. Civil Penalties. In addition to any and all other costs, fees, penalties and expenses which may be assessed or imposed as a result of violation of this Chapter, any person who violates any provision of this Chapter shall be liable and responsible for, and shall pay to the County the following penalties, as determined by the agency having jurisdiction.

- i. For each unpermitted cannabis use, no more than ten thousand dollars (\$10,000) for the first violation; no more than twenty-five thousand dollars (\$25,000) for the second violation within two (2) years; and no more than fifty thousand dollars (\$50,000) for the third violation within three (3) years.

- ii. No more than one thousand dollars (\$1,000.00) per day for the first violation; no more than two thousand dollars (\$2,000.00) per day for a second violation within two (2) years; and no more than five thousand dollars (\$5,000.00) per day for each additional violation within two (2) years for each day that the violation exists after the date of mailing or hand delivery of a notice of violation or a notice and order through to its abatement by whatever means; or

- iii. No more than twenty dollars (\$20) per square foot of cultivation or cannabis use area for the first offense; no more than thirty dollars (\$30) per square foot of the cultivation or cannabis use area for the second offense; and no more than fifty dollars (\$50) per square foot of the cultivation or cannabis use area for the third offense.

- iv. In the event that the use or structure in violation may be permitted with an appropriate permit, up to a maximum of fifty (50) times the amount of the standard fee for every required approval, review, and permit.

- a. The penalty shall be imposed via the administrative process set forth in this Section, as provided in Government Code section 53069.4, or may be imposed by the court, if the violation requires court enforcement without an administrative process. Acts, omissions, or conditions in violation of this Section that continue, exist, or occur on more than one day constitute separate violations on each day.

3. Removal of Violation. The penalties imposed by this Section may not apply if the agency having jurisdiction establishes that within five (5) days after the date of mailing or hand delivery of notice of the existence of the violation, the person removed from the property the cannabis, the cannabis equipment, the use, or structure which constituted that violation.

4. Liability for Costs and Fees. In any enforcement action brought pursuant to this Section, whether by administrative or judicial proceedings, each person

who causes, permits, suffers, or maintains the unlawful cannabis use shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible person to undertake, any abatement action in compliance with the requirements of this Section. In any action by the agency having jurisdiction to abate unlawful cannabis uses under this Section, whether by administrative or judicial proceedings, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the County in the action or proceeding.