

ORDINANCE O2022-\_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING NAPA MUNICIPAL CODE SECTION 17.52.275 (MEDICINAL AND ADULT-USE CANNABIS REGULATION AND SAFETY ORDINANCE) TO AUTHORIZE THE ISSUANCE OF CANNABIS CLEARANCES FOR ADULT-USE CANNABIS RETAILERS AND MANUFACTURERS

WHEREAS, on December 19, 2017, the City Council adopted Ordinance No. 2017-18 adding Napa Municipal Code Section 17.52.275 “Medicinal and Adult-Use Cannabis Regulation and Safety Ordinance” (“Cannabis Ordinance”) authorizing the issuance of a cannabis establishment clearance (“Cannabis Clearance”) to medicinal cannabis retailers and manufacturers provided that certain requirements are satisfied, thereby immunizing them from enforcement of the City’s prohibition of all commercial cannabis activities; and

WHEREAS, on June 19, 2018, the City Council adopted Ordinance No. 2018-008 amending the Cannabis Ordinance to revise the distance separation standards between youth-oriented properties and cannabis retailers and manufacturers; and

WHEREAS, on October 19, 2021, the City Council directed staff to update the Cannabis Ordinance to authorize the issuance of a Cannabis Clearance to adult-use cannabis retailers and manufacturers provided that certain requirements are satisfied; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

**SECTION 1: Findings.** The City Council hereby makes the following findings:

1. *The proposed amendment is consistent in principle with the General Plan.*

The proposed ordinance is consistent with the General Plan which set forth policies that encourage a mix of well-located uses to serve the needs of the community (LU-7) and create a range of uses encouraging a diverse economy (LU-10). Providing Adult-Use retail sales of cannabis in Napa will also provide an opportunity for residents to reduce the travel time to other locations outside Napa for Adult-Use cannabis, including reducing vehicle trips on the frequently congested Highway 29 corridor (LU-8).

2. *The public health, safety and general welfare are served by the adoption of the proposed amendment.*

The proposed ordinance protects the public health, safety and general welfare and mitigates potential adverse impacts through restrictions on public access to cannabis. The amended regulations set forth in the ordinance allow for Adult-Use cannabis retailers in certain zoning districts provided they operate in strict compliance with state laws and local requirements, and only where similar retail uses and/or light industry are allowed. In the absence of the regulations set forth in the ordinance, the serious adverse impacts directly associated with, and resulting from, unpermitted and/or unregulated cannabis facilities and land uses (e.g., burglaries, robberies, violence, illegal diversion of cannabis to minors, hazardous construction and electrical wiring, and noxious odors and fumes affecting neighboring properties and businesses) will pose a substantial threat to the public health, safety, and welfare of residents and businesses within the City. This ordinance is not intended to, and does not, authorize the violation of state or federal law. Together, the regulations set forth in the ordinance, the state's enactment of the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") and the state's adoption of licensing regulations for the more detailed implementation of MAUCRSA, will provide a sufficiently robust regulatory system to avoid the risks of adverse impacts described above, which will allow the City to establish the local regulation of medicinal and adult-use of cannabis as set forth in this ordinance in order to serve the public within the City and provide clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

3. *If a rezoning to a district with a larger minimum lot size is proposed, effectively reducing the planned residential density, the City shall also find that the remaining sites in the Housing Element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to California Government Code Section 65584; or if not, that it has identified sufficient additional, adequate and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.*

The proposed ordinance does not rezone land, including residential land identified as contributing to the City's ability to accommodate its share of the regional housing needs.

**SECTION 2: Amendment.** Napa Municipal Code Section 17.52.275 is hereby amended by deleting the existing text in its entirety and replacing it with the following:

**17.52.275 Medicinal and adult-use cannabis regulation and safety ordinance.**

A. Purpose, Scope, and Findings.

1. The purpose and intent of this section (which may be referenced as the "Cannabis Ordinance") is to prohibit commercial cannabis activities. However, cannabis retailers and cannabis manufacturers that hold a valid Cannabis Establishment Clearance in accordance with this section are immune from enforcement by the City of the prohibition of commercial cannabis activities. It is also the purpose and intent of this section to regulate private cannabis cultivation

## ATTACHMENT 1

in a manner that is consistent with state law and that protects the public health, safety, and welfare. The City Council finds that, in the absence of the regulations set forth in this section, the adverse impacts directly associated with the cultivation, manufacture, sale, and distribution of cannabis will pose a substantial threat to the public health, safety, and welfare of residents and businesses within the City. This section is not intended to, and does not, authorize the violation of state or Federal law.

2. All references in this section to state laws and regulations are based on the state laws and regulations in effect at the time the ordinances codified in this section were adopted, and they are intended to include and incorporate any amendments to those state laws and regulations.

3. This section was adopted initially to provide immunity for only medicinal cannabis retailers and cannabis manufacturers, and it was amended subsequently to include immunity for adult-use cannabis retailers. Any medicinal cannabis retailer who received a Cannabis Establishment Clearance prior to the amendment regarding adult-use cannabis: (a) will continue to have immunity as a medicinal cannabis retailer in accordance with this section; but (b) is prohibited from operating as an adult-use cannabis retailer without a Cannabis Establishment Clearance that expressly identifies clearance for an adult-use cannabis retailer.

B. Definitions. The words, phrases and terms used in this section will have the meaning set forth in this subsection (B) unless another meaning is clearly apparent from the context.

“Adult-use cannabis retailer” means any retailer of cannabis or cannabis products that are intended for adults who are 21 years of age and older. An adult-use cannabis retailer must possess an A-license, as defined in Business and Professions Code Section 26001(a).

“Business owner” shall have the same meaning as the word “owner” set forth in California Business and Professions Code Section 26001(am), and California Code of Regulations Title 4, Division 19, Chapter 1, Article 1, Section 15003, which generally includes, for each applicable commercial cannabis activity (whether an adult-use cannabis retailer, a medicinal cannabis retailer, or cannabis manufacturer), any of the following: (1) a person with an aggregate ownership interest of 20 percent or more, (2) the chief executive officer, (3) a member of the board of directors, and (4) a person who will be participating in the direction, control, or management of the commercial cannabis activity.

“Cannabis” shall have the meaning set forth in California Business and Professions Code Section 26001(e), which includes all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether

## ATTACHMENT 1

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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" 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. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by California Health and Safety Code Section 11018.5.

"Cannabis Establishment Clearance" shall have the meaning set forth in subsections (D)(2) through (D)(6), below.

"Cannabis manufacturer" means a person or entity who engages in the "manufacture," as defined in California Business and Professions Code Section 26001(a)(h), of cannabis products and who possesses a license for cannabis manufacturing as described in California Business and Professions Code Section 26050(a) and the state regulations applicable to the manufacture of cannabis products.

"Cannabis product" shall have the meaning set forth in California Business and Professions Code Section 26001(h), and California Code of Regulations Title 4, Division 19, Chapter 1, Article 1, Section 15000(j), which includes cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

"Cannabis retailer" means any retailer of cannabis or cannabis products that possesses: an M-license (for a medicinal cannabis retailer), as defined in California Business and Professions Code section 26001(af); an A-license (for an adult-use cannabis retailer), as defined in California Business and Professions Code section 26001(a); or both an M-license and an A-license.

"Commercial cannabis activity" shall have the meaning set forth in California Business and Professions Code Section 26001(j), which includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as provided in the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA," California Business and Professions Code Sections 26000 *et seq.*) and for which a state license or nonprofit license is required.

"Cultivation" shall have the meaning set forth in California Business and

## ATTACHMENT 1

Professions Code Section 26001(k), which includes any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products from a cannabis retailer located within the City to any other person or location, in accordance with State Cannabis Laws.

“Director” means the Community Development Director, or a designee of the Community Development Director or City Manager.

“Medicinal cannabis” or “medicinal cannabis product” shall have the meaning set forth in California Business and Professions Code Section 26001(ai), which includes cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at California Health and Safety Code Section 11362.5, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Medicinal cannabis retailer” means any retailer of medicinal cannabis or medicinal cannabis products that possesses an M-license, as defined in California Business and Professions Code Section 26001(af).

“Person with an identification card” shall have the meaning set forth in California Health and Safety Code Section 11362.7(c), which is an individual who is a qualified patient who has applied for and received a valid identification card pursuant to California Health and Safety Code Division 10, Chapter 6, Article 2.5.

“Primary caregiver” shall have the meaning set forth in California Health and Safety Code Sections 11362.5(e) and 11362.7(d), which includes an individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient.

“Qualified patient” shall have the meaning set forth in California Health and Safety Code Section 11362.7(f), which includes a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued pursuant to California Health and Safety Code Division 10, Chapter 6, Article 2.5.

“Retail sale” means any transaction whereby, for any consideration, title or possession to cannabis or cannabis products is transferred from one person to another.

“Retailer” shall have the meaning set forth in California Business and Professions Code Sections 26001(at) and 26070(a)(1), which includes a person authorized to engage in the retail sale and delivery of cannabis or cannabis

## ATTACHMENT 1

products to customers, and which requires the retailer to have a state licensed premises which is a physical location from which commercial cannabis activities are conducted.

“State Cannabis Laws” means and includes California Health and Safety Code Sections 11362.1 through 11362.45; California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.85 (Medical Marijuana Program); California Business and Professions Code Sections 26000, et seq. (Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”)); all state laws enacted or amended pursuant to SB-94, Chapter 27, Statutes of 2017; the California Attorney General’s Guidelines for the Security and Non-Diversion of Cannabis Grown for Medical Use issued in August 2019, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029; California Water Code Section 13276; all state regulations adopted pursuant to MAUCRSA, particularly including California Code of Regulations Title 4, Division 19 (Department of Cannabis Control); any license issued pursuant to MAUCRSA; and all other applicable laws of the State of California.

“Youth oriented property” means any property on which any of the following uses are located: (1) a child day care facility (as defined by California Health and Safety Code Section 1596.750, which includes a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis; and includes day care centers, employer-sponsored child care centers, and family day care homes); (2) a day care center (as defined by California Health and Safety Code Section 1596.76, including any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers, and includes child care centers licensed pursuant to California Health and Safety Code Section 1596.951); (3) a youth center (as defined by California Health and Safety Code Section 11353.1, which includes any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities); (4) a public park or playground; or (5) a school (including any private or public educational facility providing instruction in kindergarten or grades 1 through 12).

### C. Commercial cannabis activities prohibited.

1. Commercial cannabis activities are prohibited in all zones in the City and shall not be established or operated anywhere in the City.

## ATTACHMENT 1

2. No person may own, establish, open, operate, conduct, or manage a facility or property at which a commercial cannabis activity occurs in the City, or be the lessor of a facility or property where a commercial cannabis activity occurs.

### D. Limited Immunity for Cannabis Retailers and Cannabis Manufacturers

1. Notwithstanding the activities prohibited by this section, and notwithstanding that commercial cannabis activities are not and shall not become a permitted use in the City for so long as this section remains in effect, any cannabis retailer or cannabis manufacturer that complies with all of the requirements set forth in subsections (A), (B), and (D) through (G) of this section and all applicable State Cannabis Laws shall receive a limited immunity from enforcement by the City of any prohibition of commercial cannabis activities under any remedies available to the City under Chapters 1.16 through 1.26 of this code.

2. No person shall receive the immunity provided by subsection (D)(1), above, unless: (i) the Director issues a Cannabis Establishment Clearance for the relevant commercial cannabis activity (adult-use cannabis retailer, medicinal cannabis retailer, or cannabis manufacturer), and the person continues to hold a valid Cannabis Establishment Clearance, in accordance with subsections (D)(2) through (D)(6); and (ii) the person is operating in accordance with a valid Cannabis Establishment Clearance and a valid license issued by the state in accordance with State Cannabis Laws. A person may request a Cannabis Establishment Clearance ("Clearance Request") by submitting the information set forth in this subsection (D)(2) to the Director, on a form approved by the Director, accompanied by the payment of an administrative processing fee in an amount to be determined by City Council resolution, signed by the authorized representative of the business and the owner of the real property on which the cannabis retailer or cannabis manufacturer are proposed to operate. The Clearance Request shall include the following information:

(a) The name of the proposed cannabis retailer or cannabis manufacturer, including, if applicable, the name on file with the California Secretary of State and any fictitious business names and/or DBAs.

(b) Whether the proposed business, establishment, or facility is a cannabis retailer or cannabis manufacturer.

(c) For cannabis retailers, whether the proposed business is a medicinal cannabis retailer, an adult-use cannabis retailer, or a combination of both types of cannabis retailers.

(d) The proposed location of the cannabis retailer or cannabis manufacturer that demonstrates compliance with the zoning and location restrictions set forth in this section.

## ATTACHMENT 1

(e) The names, addresses, and contact information for each business owner of the proposed cannabis retailer or cannabis manufacturer.

(f) If the proposed cannabis retailer or cannabis manufacturer is incorporated, the names, titles, addresses, and contact information of each corporate officer, the name, address, and contact information of the agent for service of process, a certified copy of the articles of incorporation, and a certified copy of the bylaws.

(g) If the proposed cannabis retailer or cannabis manufacturer is a partnership, the names, addresses, and contact information for each partner and the agent for service of process.

(h) The name and contact information for each manager of a proposed cannabis retailer or cannabis manufacturer. If such information is not available at the time the Clearance Request is submitted, the cannabis retailer or cannabis manufacturer shall submit such information to the Director as soon as it becomes available.

(i) For each business owner, a criminal history (“LiveScan”) prepared not more than two weeks prior to the date of submitting the Clearance Request demonstrating that there are no pending charges or convictions for a felony, a felony or misdemeanor involving moral turpitude, or any crime involving the sale, possession for sale, manufacture, transportation, cultivation, or distribution of a controlled substance within the previous ten years, and that the business owner is not currently on parole or probation for a felony, a felony or misdemeanor involving moral turpitude, or any crime involving the sale, possession for sale, manufacture, transportation, cultivation, or distribution of a controlled substance. For each business owner, who becomes part of a medicinal cannabis retailer or cannabis manufacturer after a Cannabis Establishment Clearance is issued, the cannabis retailer or cannabis manufacturer must submit the required criminal history to the Director within two weeks of the new business owner joining the operation.

(j) A site plan and operations plan that demonstrate how the cannabis retailer or cannabis manufacturer has already complied or will comply with the requirements of this section.

(k) A copy of all required permits and certificates under title 15 (Buildings and Construction) of this code or a written acknowledgment that the cannabis retailer or cannabis manufacturer will obtain all required permits and certificates under title 15 prior to its opening, establishment, operation, and/or commencement.

(l) A written acknowledgment that a Cannabis Establishment Clearance



## ATTACHMENT 1

issued under this section does not create, confer, or convey any vested rights or entitlement to operate a cannabis retailer or cannabis manufacturer at the proposed location or anywhere else in the City.

(m) The name, address, and contact information for the owner of the property on which the cannabis retailer or cannabis manufacturer will be located.

(n) A signed writing from the owner of the property on which the cannabis retailer or cannabis manufacturer is located consenting to the business owner's use of the property as a cannabis retailer or cannabis manufacturer.

(o) A signed writing from the business owner and the owner of the property on which the cannabis retailer or cannabis manufacturer is located agreeing to indemnify, defend (with an attorney selected by the City), and hold harmless the City from any claims, damages, legal actions, or enforcement actions arising from the use of the property as a cannabis retailer or cannabis manufacturer.

(p) Any supplemental information requested by the Director to establish compliance with the requirements of this section.

3. If a Clearance Request is complete (containing all of the information required above), and the Director determines that the commercial cannabis activity is in compliance with all requirements of subsections (A) and (B) and (D) through (G) of this section, the Director shall issue a written Cannabis Establishment Clearance to the proposed cannabis retailer or cannabis manufacturer. The Cannabis Establishment Clearance shall document that the commercial cannabis activity is in compliance with all applicable local ordinances and regulations, in accordance with California Business and Professions Code Section 26055(g)(2)(C). For cannabis retailers, the Cannabis Establishment Clearance shall also state whether it applies to a medicinal cannabis retailer, an adult-use cannabis retailer, or a combination of both types of cannabis retailers.

4. No cannabis retailer may operate as an adult-use cannabis retailer or conduct any sales of adult-use cannabis and cannabis products unless that use is identified expressly in the Cannabis Establishment Clearance. Any Cannabis Establishment Clearance that does not expressly identify an adult-use cannabis retailer shall be interpreted as applying only to a medicinal cannabis retailer.

5. A Cannabis Establishment Clearance is valid for one year from the date of issuance. In order to remain eligible for the immunity provided under subsection (D)(1), a cannabis retailer or cannabis manufacturer must submit a renewal application to the Director no earlier than 90 days, and no later than 30 days, prior to the expiration of the existing Cannabis Establishment Clearance. The

# ATTACHMENT 1

renewal application must include a renewal fee, in an amount to be determined by City Council resolution, and all of the information required above for a Cannabis Establishment Clearance.

6. A Cannabis Establishment Clearance is non-transferable to another person or entity or location.

## E. Zoning and Locational Restrictions

### 1. Cannabis Retailers.

(a) Cannabis retailers may only operate in the following zoning districts: Medical Office (OM), Light Industrial (IL), and Industrial Park-Area C (IP-C).

(b) No cannabis retailer may be located on a property that is within 600 feet of any youth oriented property.

(c) No cannabis retailer may be located on a property that directly abuts, or is directly across the street from, a residential zoning district; with the exception that a cannabis retailer may be located on a property directly abutting the back yard of a residential zoning district.

### 2. Cannabis Manufacturers.

(a) Cannabis manufacturers may only operate in the following zoning districts: Light Industrial (IL), Industrial Park-Area A, B and C (IP-A, IP-B and IP-C).

(b) No cannabis manufacturers may be located on a property that is within 600 feet of any youth oriented property.

(c) No cannabis manufacturers may be located on a property that directly abuts, or is across the street from, a residential zoning district.

3. Measurement of Distance Separation Standards. The distance separation standards set forth in this section shall be the horizontal distance measured in a straight line from the property line of the youth oriented property to the closest property line of the lot on which the commercial cannabis activity (cannabis retailer or cannabis manufacturer) is proposed to be located without regard to intervening structures. This is consistent with California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768.

### 4. Exceptions for Distance Separation Standards.

## ATTACHMENT 1

(a) The distance separation standards set forth in this section may be reduced only to the extent that the Director determines, based on substantial evidence, that an impenetrable barrier to pedestrian access between the uses exists, so that the separation of the uses is functionally equivalent to the requirements of this section. For the purpose of this subsection, the phrase “impenetrable barrier” shall mean a location where there is no pedestrian crossing at either a state highway or a watercourse.

(b) The distance separation standards from youth oriented property set forth in this section shall not apply to any commercial cannabis activity if: (1) at the time the commercial cannabis activity first received a Cannabis Establishment Clearance from the City (in accordance with this section), there was no youth oriented property within 600 feet of the property on which the commercial cannabis activity is located, and (2) the commercial cannabis activity has continuously held a valid Cannabis Establishment Clearance (in accordance with this code).

### F. Operational Requirements

1. A cannabis retailer or cannabis manufacturer must comply with all applicable State Cannabis Laws.
2. A cannabis retailer may conduct retail sale of cannabis or cannabis products only between the hours of 7:00 a.m. and 8:00 p.m.
3. A cannabis retailer or cannabis manufacturer must comply with all applicable provisions of title 15 of this code.
4. A medicinal cannabis retailer may only sell, distribute, and/or provide medicinal cannabis and/or medicinal cannabis products to qualified patients, primary caregivers, or persons with an identification card who are 18 years of age or older.
5. An adult-use cannabis retailer may only sell, distribute, and/or provide cannabis and/or cannabis products to individuals who are 21 years of age or older.
6. Cannabis retailers that receive a Cannabis Establishment Clearance to operate as both a medicinal cannabis retailer and an adult-use cannabis retailer may sell, distribute, and/or provide cannabis and/or cannabis products to individuals identified in subdivisions (F)(4) and (F)(5) of this section.
7. A cannabis retailer or cannabis manufacturer may not employ any person who is under 21 years of age.

## ATTACHMENT 1

8. No person under 18 years of age shall be allowed on the property of a medicinal cannabis retailer, except that a person under 18 years of age may be allowed on the property of a medicinal cannabis retailer if he or she is a confirmed qualified patient and is accompanied by his or her licensed attending physician, parent or parents, or documented legal guardian, or is an emancipated minor as demonstrated by documentation.

9. With the exception of deliveries made in accordance with State Cannabis Laws, a cannabis retailer may not conduct, allow, or permit transactions and/or sales to occur outside of an enclosed building.

10. A cannabis manufacturer shall not conduct or engage in the commercial or retail sales of any cannabis products on the premises of the cannabis manufacturer.

11. No cannabis cultivation may occur on the property of a cannabis retailer or cannabis manufacturer.

12. A cannabis retailer or cannabis manufacturer may not allow or permit the use, inhalation, smoking, eating, ingestion, or consumption of cannabis or cannabis products on the property of the cannabis retailer or cannabis manufacturer, including in the parking areas of such property.

13. A cannabis retailer or cannabis manufacturer must utilize an odor-absorbing ventilation and exhaust system that ensures that cannabis odors generated inside the property are not detectable outside the property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the cannabis retailer or cannabis manufacturer.

14. A cannabis retailer must have an electronic point of sale system that is integrated with the California Department of Cannabis Control track and trace system prior to engaging in any commercial cannabis activity, including the purchase, sale, test, packaging, transfer, transport, return, destruction, or disposal of any cannabis goods. The electronic point of sale system must be capable of producing an electronic or automatic paper record for all transactions associated with any product sold, rented, or otherwise provided to qualified patients, primary caregivers, persons with an identification card, or adults 21 years of age or older.

15. Each cannabis retailer shall keep and maintain all financial records including, but not limited to, bank statements, sales invoices, receipts, tax records, and all records required by the California Department of Tax and Fee Administration (formerly Board of Equalization) under California Code of Regulations Title 18, Division 2, Sections 1698 and 4901.

## 16. Criminal Background Requirements.

(a) No person who is currently charged with or has been convicted within the previous ten years of a felony, a felony or misdemeanor involving moral turpitude, or any crime involving the sale, possession for sale, manufacture, transportation, cultivation, or distribution of a controlled substance, shall be a business owner of a cannabis retailer or cannabis manufacturer. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere or no contest.

(b) Prior to commencing any work within or on behalf of a cannabis retailer or cannabis manufacturer, each business owner must complete a current criminal history background check that demonstrates compliance with subsection (F)(16)(a). Each criminal history background check must be updated every 12 months.

(c) A cannabis retailer or cannabis manufacturer shall maintain a complete register of each business owner working for and/or associated with the cannabis retailer or cannabis manufacturer, including a copy of each required criminal history background check. The register and required records must be made available for inspection by any City officer or official for purposes of determining compliance with this section.

(d) A cannabis retailer or cannabis manufacturer shall notify the Police Chief in writing of any disqualifying conviction described in subsection (F)(16)(a) for a business owner within 10 days of the conviction.

(e) A cannabis retailer or cannabis manufacturer may submit to the Police Chief a written request for a waiver of the prohibition in subsection (F)(16)(a) with regard to a particular business owner on the ground that such person's involvement with the cannabis retailer or cannabis manufacturer will not pose a threat to public safety. If the Police Chief determines that the requesting party has not submitted a preponderance of evidence to support the conclusion that there is no threat to public safety, the Police Chief shall deny the request, subject to the appeal procedures before an administrative hearing officer, as set forth in Chapter 1.26. When responding to any request for a waiver under this section, and when determining whether a particular commercial cannabis activity with a particular business owner will not pose a threat to public safety, the Police Chief will take into consideration: (1) employers are prohibited from using the types of "criminal history" documented in California Code of Regulations Title 2, Division 4.1, Chapter 5, Subchapter 2, Article 2, Section 11017; and (2) the California Department of Cannabis Control will deny a license based on convictions that are substantially related to the qualifications, functions, or duties of the business for which the application is made, including criteria set forth in

## ATTACHMENT 1

California Code of Regulations Title 4, Division 19, Chapter 1, Article 3, Sections 15017 and 15035.

17. A cannabis retailer or cannabis manufacturer shall comply with all State Cannabis Laws related to adequate security practices on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft. The security practices shall include video surveillance cameras recording 24 hours per day, every day, with transmission control protocol capable of being accessed through the internet. The video surveillance cameras shall be installed to monitor the interior of the on-site secured storage area and main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities. Security video shall be maintained in accordance with State Cannabis Laws (currently a minimum of 90 days). The camera and recording system must be of adequate quality, color, rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. A professionally monitored robbery alarm system shall be installed and maintained in good working condition.

18. At all times that a cannabis retailer is open for retail sales (see subsection F(2), above), there shall be at least two licensed security guards on the premises. One security guard shall be in the retail area of the retailer, and one security guard shall be at the door. All security personnel hired or contracted for the cannabis retailer shall be licensed by the California Bureau of Security and Investigative Services and shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.

19. A cannabis retailer or cannabis manufacturer shall provide the name, cell phone number, facsimile number, and e-mail address of a manager or representative who can be reached 24 hours a day in the event that the City decides to provide notice of an operating problem associated with the cannabis retailer or cannabis manufacturer.

20. All window and exterior signage shall comply with Chapter 17.55, Sign Ordinance. Window signage at a cannabis retailer may not be placed in such a manner so as to obstruct a clear view of the interior of the cannabis retailer.

21. The property on which a cannabis retailer or cannabis manufacturer is located must be maintained in compliance with Chapter 8.16 of this code.

22. Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules or other requirements. Cannabis waste must be made unusable and unrecognizable prior to leaving the licensed premises by grinding it and incorporating it with fifty percent non-cannabis waste.

## ATTACHMENT 1

23. A cannabis retailer or cannabis manufacturers shall notify the Director and the appropriate law enforcement authorities within twenty-four hours after discovering any of the following:

- (a) Significant discrepancies identified during inventory;
- (b) Diversion, theft, loss, or any criminal activity involving the cannabis retailer or cannabis manufacturer, or any agent or employee;
- (c) The loss or unauthorized alteration of records related to cannabis, adult-use cannabis customers, medicinal cannabis patients, primary caregivers, or employees or agents of the cannabis retailer or cannabis manufacturer; or
- (d) Any other breach of security.

24. A cannabis retailer or cannabis manufacturer must pay any applicable taxes pursuant to federal, state, and local law.

25. A cannabis retailer must have access to off street parking in compliance with Chapter 17.54, on-site and adjacent to the public entry door, provided at a rate equal to one space for each 250 square feet of floor space.

26. The public entry to the cannabis retailer must be visible from a public right-of-way.

27. The area within 50 feet of the public entry door of the cannabis retailer shall be illuminated to a minimum of two foot-candles during the time between dusk and the permitted closing time of the cannabis retailer, which such lighting shall be subject to shielding as set forth in Section 17.14.040(L).

28. A cannabis retailer or cannabis manufacturer shall provide a secured storage area on-site. All cannabis and cannabis products shall be stored in this area during non-business hours.

29. The display of cannabis for sale is allowed only in restricted access areas of a cannabis retailer, and shall not be visible from outside the cannabis retailer. A restricted access area must be supervised by a staff member of the cannabis retailer at all times when any "authorized customer" (as defined in this subsection, below) is present to ensure that only authorized customers are permitted to enter. When allowing authorized customers to a restricted access area, staff members shall make reasonable efforts to limit the number of authorized customers to the number of staff members in the restricted access area at any time.

## ATTACHMENT 1

(a) For the purpose of this subsection 17.52.275(F)(29), the phrase “authorized customer” means: (i) for a medicinal cannabis retailer, a qualified patient, a primary caregiver, or a person with an identification card; and (ii) for an adult-use cannabis retailer, an adult 21 years of age or older.

(b) Restricted access areas shall be secured and maintained separately from any lobby or waiting area, and shall be clearly identified by the posting of a sign which shall be not less than twelve inches wide and twelve inches long, composed of letters not less than one-half inch in height, which shall state: (i) for a medicinal cannabis retailer, “Restricted Access Area—Only Qualified Patients, Primary Caregivers, Persons With An Identification Card Allowed, or Adults 21 Years of Age or Older”; and (ii) for an adult-use cannabis retailer, “Restricted Access Area—Only Adults 21 Years of Age or Older Allowed.”

30. No recommendations from a doctor shall be issued on the premises of a cannabis retailer or cannabis manufacturer.

31. A cannabis retailer or cannabis manufacturer must comply with all development standards applicable to the zoning district in which the cannabis retailer or cannabis manufacturer is located.

G. Inspection. City representatives may enter and inspect a cannabis retailer or cannabis manufacturer during regular business hours to ensure compliance and enforcement of the provisions of this section. It is unlawful for any property owner, landlord, lessee, or business owner, officer, partner, manager, or employee of a cannabis retailer or cannabis manufacturer to refuse to allow, impede, obstruct, or interfere with an inspection by City representatives.

### H. Enforcement

1. A cannabis retailer or cannabis manufacturer that violates any provision of this section or any applicable State Cannabis Law shall no longer be entitled to the limited immunity provided under Section 17.52.275(D).

2. The operation of a cannabis retailer, cannabis manufacturer, or other commercial cannabis activity in violation of any provision of this section or any applicable State Cannabis Law is a violation of this code and a public nuisance and may be enforced by any available remedy under this code, including, but not limited to, the following:

(a) Any remedy identified in Section 1.16.050;

(b) Issuance of an administrative citation and/or compliance order under Chapter 1.24;



(c) Any other lawful remedy.

3. Any person operating a commercial cannabis activity in violation of any provision of this section or misrepresenting any material fact in demonstrating compliance with the requirements for limited immunity is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than six months, or by both such fine and imprisonment.

I. Cultivation. No person or entity may cultivate cannabis at any location in the City, except that a person may cultivate no more than six living cannabis plants per private residence, provided that all of the following conditions are met:

1. The cultivation must be in compliance with all State Cannabis Laws (particularly California Health and Safety Code Sections 11362.1 and 11362.2).

2. The cultivation, and any cannabis produced by the cultivation, must occur within a private residence or on the grounds of the private residence (e.g., in an outdoor garden area), and must be in a locked space that is not visible by normal unaided vision from a public place.

3. Any private residence or interior space in which the cultivation occurs must be in compliance with all applicable requirements set forth in title 15 of this code. In particular, cultivation lighting shall not exceed 1200 watts; and gas products (CO<sub>2</sub>, butane, propane, natural gas, etc.) must not be used for purposes of cultivation.

4. Any private residence in which the cultivation occurs must maintain kitchen, bathrooms, and at least one bedroom for their intended use, and shall not use those areas for cultivation.

5. Adverse impacts of cultivation shall be mitigated so that a public nuisance, as defined by California Civil Code Section 3480, does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products, or wastes.

**SECTION 2: Severability.** If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

**ATTACHMENT 1**

**SECTION 3: Effective Date.** This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }  
COUNTY OF NAPA } SS:  
CITY OF NAPA }

I, Tiffany Carranza, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the 18th day of January, 2022, and had its second reading and was adopted and passed during the public meeting of the City Council on the \_\_\_ day of \_\_\_\_, 20\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_

Tiffany Carranza  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael W. Barrett  
City Attorney