

ORDINANCE O2017-018

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE BY ADDING SECTION 17.52.275: MEDICINAL AND ADULT-USE CANNABIS REGULATIONS AND SAFETY ORDINANCE; AMENDING SECTIONS 17.12.020 AND 17.14.020 IDENTIFYING MEDICINAL CANNABIS RETAILERS AS SUBJECT TO A CANNABIS ESTABLISHMENT CLEARANCE IN THE OM, IL, AND IP-C DISTRICTS; AMENDING SECTION 17.14.020 IDENTIFYING SMALL CANNABIS MANUFACTURERS AS SUBJECT TO A CANNABIS ESTABLISHMENT CLEARANCE IN THE IP-A, IP-B AND IP-C DISTRICTS; AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS ORDINANCE ARE EXEMPT FROM CEQA

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA), 21 U.S.C. Section 801 et seq., which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use; and

WHEREAS, in 1996, California voters enacted Proposition 215, which was entitled the Compassionate Use Act (the "CUA") of 1996, and was codified in California Health and Safety Code Section 11362.5; and

WHEREAS, the CUA decriminalized the possession and cultivation of medical marijuana for limited personal medical purposes; and

WHEREAS, California courts have held that the CUA created a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medical Marijuana Program (the "MMP"), which, as codified in California Health and Safety Code Section 11362.7 et seq., was intended to clarify the CUA's scope and immunize from criminal prosecution, under specified state laws, certain activities and conduct related to the provision of medical marijuana to qualified patients; and

WHEREAS, the California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the CUA and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives; and

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WHEREAS, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation; and

WHEREAS, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the "Medical Cannabis Regulation and Safety Act" or "MCRSA") were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana; and

WHEREAS, MCRSA expressly preserved local control over medical marijuana facilities and land uses, including the authority to prohibit medical marijuana facilities and cultivation completely; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA"), which legalizes and regulates the adult use of non-medical marijuana (commonly referred to as "recreational marijuana") in California; and

WHEREAS, the AUMA requires adult-use cannabis businesses, including cultivators, manufacturers, distributors, transporters, retailers, and testing laboratories, to obtain a state license in order to operate lawfully; and

WHEREAS, on June 27, 2017, the Governor signed Senate Bill 94, which repealed MCRSA and included certain provisions from MCRSA regarding medical marijuana in the AUMA; and

WHEREAS, Senate Bill 94 renamed the AUMA as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and

WHEREAS, in addition to consolidating state laws regarding medical marijuana and adult-use marijuana, Senate Bill 94 introduced more uniform terminology; and

WHEREAS, Senate Bill 94 revised references in existing law to "marijuana" or "medical marijuana" to instead refer to "cannabis" or "medicinal cannabis", and revised references to "nonmedical" to "adult-use;" and

WHEREAS, California Business and Professions Code Section 26200, which is part of MAUCRSA, expressly recognizes the ability of cities to completely prohibit all adult-use cannabis businesses or to regulate such businesses; and

WHEREAS, under MAUCRSA, individuals may possess and use specified amounts of cannabis and may cultivate up to six cannabis plants per private residence; and

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WHEREAS, under MAUCRSA, cities may ban private outdoor cannabis cultivation, but they may not completely ban private indoor cultivation of six cannabis plants or less; and

WHEREAS, MAUCRSA retained the local control provision set forth in California Business and Professions Code Section 26200(a); and

WHEREAS, Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, local control over cannabis-related land uses has been an issue of significant public importance in the City of Napa since the Act and MMP; and

WHEREAS, in 2009 and 2010, the City conducted extensive community outreach and many public meetings regarding the potential establishment of a local ordinance regulating the collective and cooperative cultivation and distribution of medicinal cannabis; and

WHEREAS, on July 6, 2010, the City Council adopted Ordinance No. O2010-12, which was intended to establish regulations for the land use formerly identified as "medical marijuana dispensaries" in a manner that would mitigate the otherwise current and immediate threats to the public health, safety, and welfare resulting from unregulated cannabis distribution facilities; and

WHEREAS, on or about October 4, 2011, the Second District Court of Appeal ruled in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070, that federal law preempted a City of Long Beach ordinance that established a comprehensive regulatory scheme governing the operation and permitting of medicinal cannabis facilities; and

WHEREAS, the City Council concluded that the Court's analysis in *Pack* raised substantial questions regarding the effectiveness and validity of Ordinance No. O2010-12; and

WHEREAS, in response to *Pack*, the City Council initially adopted a moratorium that temporarily suspended Ordinance No. O2010-12 and ultimately adopted Ordinance No. O2013-9, which repealed Ordinance No. O2010-12 in its entirety and deleted references in the Napa Municipal Code to medicinal cannabis dispensaries, facilities, and permits; and

WHEREAS, cannabis-related land uses are currently prohibited under Ordinance No. O2013-9, Napa Municipal Code Section 17.04.030(B), and principles of permissive zoning (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 431-433); and

WHEREAS, the City has received information from cities and counties throughout California that have experienced serious adverse impacts associated with and resulting from unpermitted and/or unregulated cannabis facilities and land uses, including

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burglaries, robberies, violence, illegal diversion of cannabis to minors, hazardous construction and electrical wiring, and noxious odors and fumes affecting neighboring properties and businesses, including: a 2009 white paper from the California Police Chiefs Association, a 2014 memorandum from the Santa Clara County District Attorney's Office ("Issues Surrounding Marijuana in Santa Clara County"), and a 2014 memorandum from the Santa Clara County Public Defender ("Substance-Related Suspensions in the East Side Union High School District"), and previous public reports to City Council on the potential establishment of a local ordinance regulating the collective and cooperative cultivation and distribution of medicinal cannabis, all of which are available for review in the office of the City Clerk; and

WHEREAS, it is reasonable to conclude that similar adverse impacts on the public health, safety and welfare will likely also occur in the City of Napa if medicinal and adult-use cannabis facilities and private cannabis cultivation are left unregulated; and

WHEREAS, the City Council has determined that, following the State's enactment of MCRSA and the voter's approval of the AUMA, as well as the State's enactment of MAUCRSA and the State's anticipated adoption of licensing regulations for the more detailed implementation of MAUCRSA, there are and will be sufficiently robust statewide regulatory systems in place 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 by providing clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies; and

WHEREAS, an ordinance prohibiting medicinal and adult-use cannabis facilities, while providing a limited Municipal Code immunity to medicinal cannabis retailers and small cannabis manufacturers that operate in strict compliance with state laws and local requirements, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Napa; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including the foregoing recitals, 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: Section 17.52.275 of Chapter 17.52 of Title 17 of the Napa Municipal Code is hereby added as follows:

17.52.275 Medicinal and Adult-Use Cannabis Regulation and Safety Ordinance

A. Purpose, Scope, and Findings

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The purpose and intent of this section is to prohibit all commercial cannabis activities. However, medicinal cannabis retailers and small cannabis manufacturers that hold a valid Cannabis Establishment Clearance in accordance with this section are immune from enforcement of the prohibition of all commercial cannabis activities. It is also the purpose and intent of this section to regulate private cannabis cultivation in 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.

B. Definitions

"Business owner" shall have the meaning set forth in California Business and Professions Code Section 26001(a), which includes, for each applicable commercial cannabis activity (whether a medicinal cannabis retailer or small cannabis manufacturer), all of the following: (1) a person with an aggregating 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(f), which includes all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "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)(5), below.

"Commercial cannabis activity" shall have the meaning set forth in California Business and Professions Code Section 26001(k), 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.

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“Cultivation” shall have the meaning set forth in California Business and Professions Code Section 26001(l), 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 medicinal cannabis retailer located within the City or a state-licensed cannabis retailer located outside the City, in accordance with State Cannabis Laws, to a primary caregiver, qualified patient, or person with an identification card located inside the City.

“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 commercial cannabis activity that is a retailer of medicinal cannabis or medicinal cannabis products.

“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 Division 10, Chapter 6, Article 2.5 of the California Health and Safety Code.

“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 Division 10, Chapter 6, Article 2.5 of the California Health and Safety Code.

“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 Section 26070(a)(1), which includes the retail sale and delivery of cannabis or cannabis 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.

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“Small cannabis manufacturer” means: (a) a “manufacturer,” as that term is used in California Business and Professions Code Section 26001(ah); that (b) operates as an ancillary use to a food manufacturer or processing business (that does not sell alcoholic beverages or tobacco products) as defined by Section 17.14.020(A) of this code.

“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 11362.83 (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 Marijuana Grown for Medical Use issued in August, 2008, 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; 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); (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.

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 Medicinal Cannabis Retailers and Small Cannabis Manufacturers

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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 medicinal cannabis retailer or small cannabis manufacturer that complies with all of the requirements set forth in 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, and the person continues to hold a valid Cannabis Establishment Clearance, in accordance with subsections (D)(2) through (D)(5); and (ii) the person is operating in accordance with a valid license issued by the state in accordance with MAUCRSA and 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 medicinal cannabis retailer or small cannabis manufacturer are proposed to operate. The Clearance Request shall include the following information:

- (a) The name of the proposed medicinal cannabis retailer or small cannabis manufacturer, including, if applicable, the name on file with the California Secretary of State and any fictitious business names and/or DBA's.
- (b) Whether the proposed business, establishment, or facility is a medicinal cannabis retailer or small cannabis manufacturer.
- (c) The proposed location of the medicinal cannabis retailer or small cannabis manufacturer (must comply with the zoning and location restrictions set forth in this section).
- (d) The names, addresses, and contact information for each business owner of the proposed medicinal cannabis retailer or small cannabis manufacturer.
- (e) If the proposed medicinal cannabis retailer or small 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.
- (f) If the proposed medicinal cannabis retailer or small cannabis manufacturer is a partnership, the names, addresses, and contact information for each partner and the agent for service of process.

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

(h) 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 subject 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 small cannabis manufacturer after a Cannabis Establishment Clearance is issued, the medicinal cannabis retailer or small cannabis manufacturer must submit the required criminal history to the Director within two weeks of the new business owner joining the operation.

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

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

(k) A written acknowledgment that a Cannabis Establishment Clearance issued under this section does not create, confer, or convey any vested rights or entitlement to operate a medicinal cannabis retailer or small cannabis manufacturer at the proposed location or anywhere else in the City.

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

(m) An agreement signed by the owner of the property on which the medicinal cannabis retailer or small cannabis manufacturer is located consenting to the use of the property as a medicinal cannabis retailer or small cannabis manufacturer and agreeing to indemnify, defend (with an attorney selected by the City), and hold harmless the City from any claims, damages, legal or enforcement actions arising

from the use of the property as a medicinal cannabis retailer or small cannabis manufacturer.

(n) 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 this section, the Director shall issue a written Cannabis Establishment Clearance to the proposed medicinal cannabis retailer or small 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).

4. 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 medicinal cannabis retailer or small 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 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.

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

E. Zoning and Locational Restrictions

1. Medicinal Cannabis Retailers.

(a) Medicinal 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 medicinal cannabis retailer may be located on a property that is within 1,000 feet of any youth oriented property.

(c) No medicinal 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 medicinal cannabis retailer may be located on a property directly abutting the back yard of a residential zoning district.

2. Small Cannabis Manufacturers

(a) Small 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 small cannabis manufacturers may be located on a property that is within 1,000 feet of any youth oriented property.

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

3. Exceptions for Distance Separation Standards

(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 California State Route 29 provides an impenetrable barrier to pedestrian access between the uses, so that the separation of the uses is functionally equivalent to the requirements of this section.

(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 in accordance with this section, there was no youth oriented property within 1,000 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 subsections (D)(2) through (D)(5)).

F. Operational Requirements

1. A medicinal cannabis retailer or small cannabis manufacturer must comply with all applicable State Cannabis Laws.

2. A medicinal cannabis retailer may only sell medicinal cannabis or medicinal cannabis products between the hours of 7:00 a.m. and 8:00 p.m.

3. A medicinal cannabis retailer or small 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. A medicinal cannabis retailer or small cannabis manufacturer may not employ any person who is not at least 21 years of age.

6. No person under 18 years of age shall be allowed on the property of a medicinal cannabis retailer or small cannabis manufacturer unless 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.

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

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

9. No cannabis cultivation may occur on the property of a medicinal cannabis retailer or small cannabis manufacturer.

10. A medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer, including in the parking areas of such property.

11. A medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer.

12. A medicinal cannabis retailer must have an electronic point of sale system that is either part of their seed to sale software or integrates with their seed to sale software. 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, or persons with an identification card.

13. 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 medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer, each business owner must complete a current criminal history background check that demonstrates compliance with subsection (F)(13)(a). Each criminal history background check must be updated every 12 months.

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(c) A medicinal cannabis retailer or small cannabis manufacturer shall maintain a complete register of each business owner working for and/or associated with the medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer shall notify the Police Chief in writing of any disqualifying conviction described in subsection (F)(13)(a) for a business owner within 10 days of the conviction.

(e) A medicinal cannabis retailer or small cannabis manufacturer may submit to the Police Chief a written request for a waiver of the prohibition in subsection (F)(13)(a) with regard to a particular business owner on the ground that such person's involvement with the medicinal cannabis retailer or small 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.

14. A medicinal cannabis retailer or small cannabis manufacturer shall comply with all State Cannabis Laws related to adequate security practices on the premises, including lighting and alarms, to insure 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 for a minimum of 72 hours. 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.

15. At all times that a medicinal 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.

16. A medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer.

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17. All window and exterior signage shall comply with Chapter 15.56. Window signage at a medicinal cannabis retailer may not be placed in such a manner so as to obstruct a clear view of the interior of the medicinal cannabis retailer.

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

19. 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.

20. A medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer, or any agent or employee;
- (c) The loss or unauthorized alteration of records related to cannabis, medicinal cannabis patients, primary caregivers, or employees or agents of the medicinal cannabis retailer or small cannabis manufacturer; or
- (d) Any other breach of security.

21. A small cannabis manufacturer must comply with all applicable State Cannabis Laws.

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

23. A medicinal 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.

24. The public entry door to the medicinal cannabis retailer must be visible from, and within 200 feet of, a public street-of-way.

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

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26. A medicinal cannabis retailer or small 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.

27. The display of medicinal cannabis for sale is allowed only in restricted access areas of a medicinal cannabis retailer, and shall not be visible from outside the medicinal cannabis retailer. A restricted access area must be supervised by a staff member at all times when qualified patients, primary caregivers, or persons with an identification card are present to ensure that only qualified patients, primary caregivers, or persons with an identification card are permitted to enter. When allowing a qualified patients, primary caregivers, or persons with an identification card access to a restricted access area, staff members shall make reasonable efforts to limit the number of qualified patients, primary caregivers, or persons with an identification card in relation to the number of staff members in the restricted access area at any time. 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, "Restricted Access Area—Only Qualified Patients, Primary Caregivers, and Persons With An Identification Card Allowed."

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

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

G. Inspection

City representatives may enter and inspect a medicinal cannabis retailer or small 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 medicinal cannabis retailer or small cannabis manufacturer to refuse to allow, impede, obstruct, or interfere with an inspection by City representatives.

H. Enforcement

1. A medicinal cannabis retailer or small 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 medicinal cannabis retailer, small 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

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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 (CO₂, 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: Amendment. The Land Use Regulations table set forth in Subsection 17.12.020.B(5) "Retail Uses" is hereby amended to: (1) add "Medicinal cannabis retailers"

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in the appropriate alphabetical location within the table; (2) insert an asterisk "*" under the column labeled "OM"; and (3) insert "* See standards for Cannabis Establishment Clearance in Section. 17.52.275" under the column labeled "Added Use Regulations."

SECTION 3: Amendment. The Land Use Regulations table set forth in Subsection 17.14.020.B(9) "Retail Uses" is hereby amended to: (1) add "Medicinal cannabis retailers" in the appropriate alphabetical location within the table; (2) insert an asterisk "*" under the columns labeled "IL" and "IP-C," and (3) insert "* See standards for Cannabis Establishment Clearance in Section. 17.52.275" under the column labeled "Added Use Regulations."

SECTION 4: Amendment. The Land Use Regulations table set forth in Subsection 17.14.020.A "Industrial Uses" is hereby amended to: (1) add "Small cannabis manufacturers" in the appropriate alphabetical location within the table; (2) insert an asterisk "*" under the columns labeled "IP-C", "IP-B" and "IP-C"; and (3) insert "See standards for Cannabis Establishment Clearance in Section 17.52.275" under the column labeled "Added Use Regulations."

SECTION 5: CEQA. This ordinance is not a project within the meaning of the California Environmental Quality Act ("CEQA," as codified in the California Public Resources Code Division 13), because it has no potential for resulting in physical change in the environment, directly or ultimately (see CEQA Guidelines Section 15378). In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in California Business and Professions Code Section 26055(h) (adoption of an ordinance that establishes other authorizations to engage in commercial cannabis activity); and it is subject to the CEQA exemption contained in CEQA Guideline Section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. Finally, in the event that the ordinance is not exempt from CEQA, the potential environmental effects of the ordinance fall within the scope of, and were adequately examined by, the Environmental Impact Report (EIR) for Envision Napa 2020, the City's General Plan (the "General Plan EIR"), certified on December 1, 1998, pursuant to CEQA Guidelines section 15168. Section 15168(c) states that if the City determines that, pursuant to CEQA Guidelines section 15162, no new effects could occur and no new mitigation measures would be required due to adoption of the ordinance, then the City can approve the ordinance as being within the scope of the impacts examined in the General Plan EIR. The City has made such a determination based on substantial evidence in the record, and therefore no subsequent environmental review is required.

SECTION 3: 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-

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sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: Teche

ATTEST: Dorothy Roberts
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA
COUNTY OF NAPA SS:
CITY OF NAPA

I, Dorothy R. Roberts, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 5th day of December, 2017, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 19th day of December, 2017, by the following vote:

- AYES: Mott, Krider, Gentry, Sedgley, Techel
- NOES: None
- ABSENT: None
- ABSTAIN: None

ATTEST: Dorothy Roberts
Dorothy Roberts
City Clerk

Approved as to Form:

Michael W. Barrett
Michael W. Barrett
City Attorney