

ORDINANCE NO. 2017-_____

AN ORDINANCE AMENDING SECTIONS 28.21, 28.22, 28.23, 28.31, 28.32, 28.41, 28.42, 28.43, 28.51, 28.52, 28.61 AND ADDING SECTION 28.82 TO REGULATE CANNABIS CULTIVATION FOR PERSONAL USE IN UNINCORPORATED SOLANO COUNTY

The Board of Supervisors of Solano County do hereby ordain as follows:

SECTION I. Findings

- A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis as a Schedule I Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess cannabis, whether for medical or recreational purposes.
- B. In 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act (Health and Safety Code Section 11362.5), which was intended to provide a defense to criminal charges for the cultivation and possession of medical cannabis by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use. The Compassionate Use Act further provided that nothing in it shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non-medical purposes.
- C. SB 420, the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.), was enacted in 2004 to expand and clarify the scope of Proposition 215 by creating the Medical Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering medical cannabis, as well as limiting the amount of medical cannabis a qualified individual may possess.
- D. SB 420 defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- E. The State enacted the Medical Marijuana Regulation and Safety Act (MMRSA) on September 11, 2015 (SB 643, AB 266, and AB 243), instituting a comprehensive state-level licensure and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis. Although MMRSA provides that patients may cultivate up to 100 square feet of cannabis for their personal use, and caregivers may cultivate up to 500 square feet of cannabis for the personal use of up to five patients, cities and counties retain local regulatory authority over medical cannabis, including personal cultivation.
- F. The Governor signed SB 837 on June 27, 2016, changing references to the term "marijuana" in MMRSA to "cannabis" and renaming MMRSA the "Medical Cannabis Regulation and Safety Act" (MCRSA).
- G. On November 8, 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was enacted by the voters to decriminalize and regulate commercial and non-commercial recreational cannabis. AUMA provides that cities and counties retain local regulatory control over commercial recreational cannabis, but personal cultivation of up to six plants must be allowed inside a private residence or in a secured structure on the grounds of a private residence.

- H. In response to MCRSA and AUMA, the Board of Supervisors, at an open public meeting, directed staff to bring forward a zoning ordinance allowing but regulating medical and recreational cannabis cultivation for personal use within the jurisdictional boundaries of Solano County.
- I. The unregulated personal cultivation of cannabis in the unincorporated area of Solano County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for personal cannabis cultivation, including zoning regulation, is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated indoor cannabis cultivation.
- J. Children are particularly vulnerable to the effects of cannabis use and the presence of cannabis plants or products is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children, such as schools, parks, and other similar locations.
- K. Outdoor cannabis cultivation, especially within the remote areas, is creating significant impacts to California's surface and groundwater resources. The State Water Resources Control Board, the San Francisco Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of cannabis cultivation operations, and corresponding increases in impacts to water supply and water quality, including the discharges into water of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste.
- L. The ability to cultivate cannabis plants for medical or recreational purposes conferred by MCRSA and AUMA does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter in coordination with MCRSA and AUMA, the County intends to minimize the risks and complaints regarding fire, odor, crime and pollution caused or threatened by the unregulated cultivation of cannabis in the unincorporated area of Solano County.
- M. Nothing herein shall be construed to allow the cultivation or use or allow any activity relating to the cultivation or use of cannabis that is otherwise illegal under State law.
- N. The Board finds and declares that the adoption of this Ordinance is necessary and desirable to ensure that environmental, public health, safety and nuisance factors related to the cultivation of cannabis for personal use are adequately addressed.

SECTION II.

The Residential Allowed Uses in the Tables of Allowed Uses in sections 28.21, 28.22, 28.23, 28.31, 28.32, 28.41, 28.42, 28.43, 28.51, 28.52, 28.61 of Article II, Chapter 28 are hereby amended as depicted in Attachment A to allow by right personal cultivation of medical and recreational cannabis in a residence or on the grounds of a residence, subject to the land use regulations at section 28.82, in all zones where a residence is a use allowed by right. Primary caregiver cultivation of up to 500 square feet is allowed with an administrative permit in in all zones where a residence is a use allowed by right, subject to the land use regulations at section 28.82.

SECTION III.

Section 28.82 is added to Article III, Chapter 28 of the Solano County Code to read as follows:

28.82 Personal Cannabis Cultivation and Primary Caregiver Cultivation Uses

A. General Requirements.

1. Personal and primary caregiver cannabis cultivation indoors in a residence or inside a permanent residential accessory structure on the grounds of a residence shall be allowed if it meets the applicable standards in this Chapter and complies with all state and county laws.
2. Personal and primary caregiver cannabis cultivation outdoors on the grounds of a residence is allowed if it meets the applicable standards in this Chapter and complies with all state and county laws.

B. Definitions

1. Cannabis: all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.
2. Canopy (plant): the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed, clones, including plants in vegetative or flowering states. The canopy shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises.
3. Cultivation Room: the premises or structure where cannabis is planted, grown, and harvested.
4. Indoor Cannabis Cultivation: cultivation of cannabis using artificial lighting inside a structure with permanent floor, walls, and roof that can be secured with a lock.
5. Marijuana: see "Cannabis", above.

6. Medical Marijuana Identification Card: document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
7. Outdoor Cannabis Cultivation: outdoor cultivation of cannabis exclusively outdoors, using natural light and not within a structure. Cultivation inside a hoop house, greenhouse or similar shall be deemed outdoor cultivation.
8. Personal Cannabis Cultivation: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis in compliance with state and county law for medical or recreational use that is intended for use by a) medical cannabis patients in accordance with Health and Safety Code section 11362.777(g), as may be amended, pursuant to the Compassionate Use Act of 1996 (Proposition 215); or b) recreational cannabis users in accordance with Health & Safety Code section 11362.1(a)(3), as may be amended.
9. Primary Caregiver Cultivation or Caregiver Cultivation: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of up to 500 square feet of medical cannabis canopy by a designated primary caregiver for up to five qualified patients or holders of Medical Marijuana Identification cards in compliance with county and state laws, including Health and Safety Code section 11362.777(g), as may be amended.
10. Primary Caregiver Administrative Permit: a permit that must be obtained by a primary caregiver prior to cultivating for qualified patients or holders of Medical Marijuana Identification Cards. This permit shall be issued pursuant to the requirements of section 28.101(Administrative Permit) and this section.
11. Primary Caregiver or Caregiver: an individual who is designated by a qualified patient or by a person with a Medical Marijuana Identification Card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health & Safety Code section 11362.7(d), as may be amended.
12. Qualified Patient: a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have a Medical Marijuana Identification Card, as defined in Health and Safety Code section 11362.7(f), as may be amended.
13. Recreational Cannabis: cannabis used by and intended for an individual over 21, who is neither a qualified patient nor a holder of a Medical Marijuana Identification Card, in accordance with Health & Safety Code section 11362.1(a)(3), as may be amended.

C. Personal and Caregiver Cultivation Amounts

The following amounts of personal and caregiver cannabis may be cultivated so long as the cultivation is in compliance with county and state law and regulations and the Cultivation Standards provided herein:

1. Qualified patients or individuals with a Medical Marijuana Identification Card who are over 18 may cultivate up to 100 square feet of medical cannabis canopy for their own use outside, inside a private residence, or in a permanent residential accessory structure located on the grounds of a private residence in compliance with the personal cannabis cultivation standards.
2. Individuals over 18 designated as the primary caregiver of qualified patients or individual(s) with a Medical Marijuana Identification Card may cultivate up to 500 square feet of medical cannabis outside, inside a private residence, or in a permanent residential accessory structure on the grounds of a private residence for up to five patients or card-holders in compliance with the caregiver cultivation standards and upon obtaining a Primary Caregiver Administrative Permit from the County.
3. Individuals over 21 may cultivate up to 6 cannabis plants for their own recreational use outside, inside a private residence, or in a permanent residential accessory structure located on the grounds of a private residence in compliance with the personal cannabis cultivation standards.

D. Personal Cannabis Cultivation Standards

1. Outdoor Cannabis Cultivation

- a. The outdoor cultivation must occur on a parcel with an inhabited residence. The residence must be occupied by the person for whom the personal use cannabis is intended.
- b. Outdoor personal cannabis cultivation must occur in the rear 50% of the parcel and any cannabis canopy area must be at least 10 feet from any property line or easement and must be screened from public view and or right-of way.
- c. The location of cannabis cultivation, drying, curing, and trimming activities must be in a fenced and secured area not accessible to household visitors or underage individuals

2. Indoor Cannabis Cultivation

- a. The indoor cultivation of personal use cannabis must occur within either an inhabited residence or in a permanent residential accessory structure on the grounds of an inhabited residence. The residence must be occupied by the person for whom the personal use cannabis is intended.

- b. The location of cannabis cultivation, drying, curing, and trimming activities must be in a secured room not accessible to visitors or underage individuals.
- c. Gas products (including, but not limited to CO2, butane, propane, and natural gas) or ozone generators shall not be used in any cultivation room.
- d. No open flame or burning of any substance may occur in the cultivation room.

E. Primary Caregiver Cultivation

1. Primary Caregiver Administrative Permit

- a. All individuals who intend to cultivate cannabis as a primary caregiver must obtain a yearly administrative permit from the Department of Resource Management in compliance with the requirements of this section and section 28.101. The following shall be provided, along with any other information required in section 28.101, in order to process a caregiver cultivation administrative permit:
 - i. Proof of legal ownership of the parcel or written documentation from a landlord that the applicant has permission to cultivate cannabis as a caregiver at the subject location.
 - ii. A copy of the Medical Marijuana Identification Card number for each individual the primary caregiver is cultivating for, which will be verified on the California Department of Public Health website. If the qualified patient does not have a Medical Marijuana Identification Card, then a copy of the patient's physician recommendation for medical cannabis, along with a signed statement from the qualified patient naming the applicant as his/her primary caregiver.
 - iii. Plot plan of where the cultivation will occur on the parcel, in the permanent residential accessory structure on the parcel, or in the residence on the parcel.
 - iv. Acknowledgement that County personnel will schedule a site visit with the applicant to review compliance with the primary caregiver cultivation standards, as well as any applicable requirements of the County Code.
 - v. Acknowledgement that a permit automatically expires after one year, at which time a new permit application must be made, and that no caregiver cultivation may occur prior to issuance of a permit or if the permit has expired.

- vi. Acknowledgement that a caregiver cultivation administrative permit may be denied or revoked in the event the cultivation does not occur in compliance with the requirements of this Chapter and state law.
- vii. Payment of a fee, as established by the Board of Supervisors to recover the reasonable costs of administering this administrative permit program.

2. Primary Caregiver Cultivation Standards

a. Outdoor Caregiver Cultivation

- i. Upon obtaining a yearly administrative permit, caregiver cultivation may occur outdoors on a parcel one acre or larger that has a residence inhabited by the primary caregiver or the patient for whom the medical cannabis is intended.
- ii. Caregiver cultivation must occur in the rear 50% of the parcel and any cannabis canopy area must be at least 20 feet from any property line or easement and must be screened from public view and or public right-of-way.
- iii. Drying, curing, trimming, and any other cannabis processing activities must be in a secured area not accessible to visitors or underage individuals.
- iv. Electrical lights shall not be used for outdoor cannabis cultivation.
- v. In the absence of regulations from the State of California providing guidance on which substances may be safely used on cannabis, only substances that are exempt from residue tolerance requirements as established by the U.S. EPA and either exempt from registration requirements (40 CFR § 152.25 and 3 CCR § 6147, as they may be amended) or registered for a use that is broad enough to include use on cannabis may be used on medical cannabis cultivated by primary caregivers.

b. Indoor Caregiver Cultivation

- i. Upon obtaining a yearly administrative permit, a primary caregiver may cultivate medical cannabis in an inhabited residence or in a permanent residential accessory structure on the grounds of an inhabited residence. The caregiver or the patient for whom the medical cannabis is intended must inhabit the residence.
- ii. Window coverings must be utilized in the indoor cultivation room to minimize, to the extent possible, light pollution from grow lights.

- iii. Gas products (including, but not limited to CO₂, butane, propane, and natural gas) or ozone generators shall not be used in any cultivation room.
- iv. No open flame or burning of any substance may occur in the cultivation room.
- v. The use of generators to power any cultivation equipment is prohibited, except as an emergency back-up system. The use of extension cords in the cultivation room are likewise prohibited.
- vi. In the absence of regulations from the State of California providing guidance on which substances may be safely used on cannabis, only substances that are exempt from residue tolerance requirements as established by the U.S. EPA and either exempt from registration requirements (40 CFR § 152.25 and 3 CCR § 6147, as they may be amended) or registered for a use that is broad enough to include use on cannabis may be used on medical cannabis cultivated by primary caregivers.

F. Confidentiality

To the extent permitted by law, any personal or medical information submitted with a primary caregiver administrative permit application shall be kept confidential and shall only be used for purposes of administering this section.

G. Enforcement

It is hereby declared unlawful and a public nuisance for any person to cultivate cannabis for personal or primary caregiver use except as provided for in this Chapter. The County may elect to pursue any and all available administrative remedies and civil causes of action to enforce this Section.

SECTION IV. Environmental Determination.

In accordance with the California Environmental Quality Act (CEQA), it has been determined that this project is exempt from further environmental review under Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the project may have a significant effect on the environment. The Director of Resource Management is directed to file a Notice of Exemption in accordance with CEQA.

SECTION V. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion(s) of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION VI. Effective Date.

This Ordinance and all amendments to the Solano County Code as set forth within shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of Board adoption. This Ordinance shall be published once before the expiration of fifteen (15) days after adoption, with the names of the Supervisors voting for or against the same, in a newspaper of general circulation published in Solano County, California.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on _____ by the following vote:

AYES: Supervisors _____

NOES: Supervisors _____
EXCUSED: Supervisors _____

JOHN M. VASQUEZ, Chair
Solano County Board of Supervisors

ATTEST:
Birgitta E. Corsello, Clerk
Board of Supervisors

By: _____
Jeanette Neiger, Chief Deputy Clerk