

ORDINANCE NO. 2017-_____

AN ORDINANCE AMENDING CHAPTER 28 TO ALLOW NON-COMMERCIAL PERSONAL USE AND PRIMARY CAREGIVER CANNABIS CULTIVATION IN EVERY ZONE THAT ALLOWS A RESIDENCE AS A PRIMARY USE AND ADDING SECTION 28.82 TO REGULATE NON-COMMERCIAL CANNABIS CULTIVATION FOR PERSONAL USE AND PRIMARY CAREGIVER CULTIVATION 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. The Medical Marijuana Regulation and Safety Act (MMRSA, later changed to MCRSA by SB 837) was enacted 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.
- E. In response to the new state laws regulating medicinal cannabis, the Board of Supervisors directed staff to develop and bring forward a zoning ordinance regulating medicinal cannabis cultivation for personal use within the jurisdictional boundaries of Solano County
- F. 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 provided that cities and counties retain local regulatory control over commercial recreational cannabis, but that 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.

- G. In order to preserve the status quo pending the creation and adoption of local regulations in response to MCRSA and AUMA, the Board of Supervisors on December 6, 2016 adopted interim urgency ordinance number 2016-1781 prohibiting all commercial cannabis and marijuana activities, as well as the outdoor cultivation of cannabis and marijuana for personal use. This prohibition on personal outdoor cultivation was numbered in ordinance 2016-1781 as section 4 and entitled "Interim Prohibition of Outdoor Cultivation of Marijuana for Personal Use". The Board extended ordinance number 2016-1781 in its entirety on January 10, 2017.
- H. The Solano County Planning Commission held public hearings on November 17, 2016, January 19, 2017 and March 16, 2017 regarding personal cultivation of medical and recreational cannabis, during which the Commissioners took public comment and reviewed and considered a large number of possible regulations in the draft personal cannabis cultivation ordinance. On March 16th, the Planning Commission recommended the Board of Supervisors adopt the personal cultivation ordinance.
- I. However, on June 27, 2017, the Governor signed the Medicinal and Adult Use of Cannabis Regulation and Safety Act ("MAUCRSA" or "SB 94"), which merged the medical and recreational cannabis laws to the extent possible.
- J. MAUCRSA resulted in minor changes that needed to be made to the Planning Commission approved draft ordinance in order to comply with this new state law.
- K. Regulation in this area is needed because the unregulated personal cultivation of cannabis in the unincorporated area of Solano County has the potential to adversely affect the health, safety, and well-being of the County, its residents and the 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 cannabis cultivation.
- L. Children are particularly vulnerable to the effects of cannabis use and the unregulated presence of cannabis plants or finished cannabis is an attractive nuisance for children.
- M. The ability to cultivate cannabis plants for non-commercial personal use conferred by MAUCRSA, 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 MAUCRSA, 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.
- N. 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 or County law.
- O. 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 cannabis plants in a residence, or in an accessory structure on the grounds of a residence ~~or outdoors on the grounds of a residence~~, subject to the land use regulations at section 28.82, in all zones where a residence is a principally permitted use. Primary caregiver cultivation is allowed with an administrative permit in in all zones where a residence is a principally permitted use, 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 shall be 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, as defined by Section 11018 of the Health and Safety Code as may be amended. Cannabis is classified as an agricultural product separately from other agricultural crops or commodities.
2. Cultivation Room: a fully enclosed and lockable room inside the premises or structure where cannabis is planted, grown, and harvested.
3. Exception for Medicinal Cannabis Outdoor Cultivation: process by which a qualified patient, as defined herein, may request an exception to the general prohibition on outdoor cannabis cultivation to cultivate a limited number of medicinal cannabis plants outdoors.

4. Greenhouse: A structure designed to control the heat and humidity of the growing environment of plants. To be deemed a greenhouse under this section, the structure must be fully enclosed, able to be secured with a lock and have rigid walls and a roof designed to let sunlight through. A greenhouse is subject to all applicable County permitting requirements.
5. Indoor Cannabis Cultivation: cultivation of cannabis using artificial lighting inside a structure that can be secured with a lock and which has a permanent floor, walls, and roof. Cannabis cultivation in a greenhouse that conforms to the requirement of this section shall be deemed indoor cannabis cultivation.
6. Marijuana: see "Cannabis", above.
7. Outdoor Cannabis Cultivation: cultivation of cannabis occurring 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 or Personal Cannabis: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis in compliance with state and county law by a) medicinal cannabis patients in accordance with Health and Safety Code section 11362.77(a) and Business and Professions Code section 26033(a), as may be amended, or b) recreational cannabis users in accordance with Health & Safety Code section 11362.1(a)(3), as may be amended. Such cultivation shall not be considered a commercial activity only as long as it is in compliance with this Article and state law.
9. Primary Caregiver Cultivation or Caregiver Cultivation: any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis by a designated primary caregiver for up to five qualified patients in compliance with county and state laws, including Health and Safety Code section 11362.77(a) and 11362.7(d), as may be amended. Such cultivation shall not be considered a commercial activity only as long as it is in compliance with this Article, as well as Business and Professions Code section 26033(b) and Health and Code section 11362.765(c), as they 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 designated by a qualified patient 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 and possesses either a Medicinal Cannabis Identification Card or a

Medicinal Cannabis Physician's Recommendation as defined in Health and Safety Code sections 11362.7(c) and (f), 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 may cultivate up to six (6) mature or twelve (12) immature cannabis plants 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. A primary caregiver of qualified patients may cultivate up to six (6) mature or twelve (12) immature cannabis plants per qualified patient ~~outside~~, inside a private residence, or in a permanent residential accessory structure on the grounds of a private residence in compliance with the Caregiver Cultivation Standards and upon obtaining a Primary Caregiver Administrative Permit.
3. Individuals may cultivate up to six (6) cannabis plants 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.

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 grown on that parcel is intended.~~
- ~~b. Outdoor personal cannabis cultivation must occur in the rear 50% of the parcel.~~
- ~~c. All parts of the cannabis plant must be at least 10 feet from any property line or easement and must be screened from public view.~~
- ~~d. The location of outdoor cannabis drying, curing, and trimming activities must be in a fenced and secured area that is not accessible to household visitors or underage individuals.~~

~~2. 1. 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 grown on that parcel is intended.
- b. The location of indoor cannabis cultivation, drying, curing, ~~and~~ trimming, and other processing 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. In the event electric lights are used in a greenhouse to cultivate cannabis, the lights must be either turned off between the hours of 9 p.m. and 6 a.m. or the greenhouse must be shielded so that any such light is not visible from a contiguous property.

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 by an applicant, along with any other information required in section 28.101, in order to process a caregiver cultivation administrative permit:
 - i. Completed Primary Caregiver Administrative Permit application.
 - ii. 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.
 - iii. Proof of caregiver status and the total number of patients for whom the primary caregiver cultivates cannabis. Information identifying any patient will not be retained and caregiver status shall be verified solely for the purposes of ensuring compliance with and eligibility for a Primary Caregiver Administrative Permit in compliance with Business and Professions Code section 26162(a).
 - iv. Plot plan of the parcel where the cultivation will occur, ~~on the parcel, or including the location of the cultivation room or greenhouse in the permanent residential accessory structure on the parcel, or in the residence on the parcel.~~

- v. Signed 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.
- vi. Signed acknowledgement that the primary caregiver operation shall not generate traffic in excess of that normally associated with the residential use of the property and that no patients shall visit the site between the hours of 8 p.m. and 8 a.m.
- vii. Signed acknowledgement that the primary caregiver cannabis cultivation site shall not generate noise, odor, dust, glare, vibration, or electrical interference to neighboring properties or constitute a nuisance, or be detrimental to the health, safety, peace, morals, comfort or general welfare of the public.
- viii. Signed acknowledgement that a Primary Caregiver Administrative 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.
- ix. Signed 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 County code and state law.
- x. 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 Primary Caregiver Administrative Permit, caregiver cultivation may occur outdoors on a parcel one acre or larger that has a residence inhabited by the primary caregiver cultivating the medicinal cannabis or at least one patient for whom the medicinal 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.~~

a. Indoor Caregiver Cultivation

- i. Upon obtaining a yearly Primary Caregiver Administrative Permit, a primary caregiver may cultivate medicinal cannabis in an inhabited residence or in a permanent residential accessory structure or a greenhouse on the grounds of an inhabited residence. The primary caregiver cultivating the medicinal cannabis or at least one patient for whom the medicinal 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. In the event electric lights are used in a greenhouse to cultivate cannabis, the lights must be either turned off between the hours of 9 p.m. and 6 a.m. or the greenhouse must be shielded so that any such light is not visible from a contiguous property.
- 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 or extension cords to power any cultivation equipment is prohibited, except as an emergency back-up system. .
- vi. Cultivation, drying, curing, trimming, and any other cannabis processing activities must be in a secured area not accessible to visitors or underage individuals.

F. Exception for Medicinal Cannabis Outdoor Cultivation

1. A qualified patient, as defined herein, may request an exception to the general prohibition on outdoor cannabis cultivation to cultivate two (2) medicinal cannabis plants outdoors on a yearly basis. In no case will a qualified patient cultivate more than six (6) mature or (12) immature cannabis plants total on a parcel regardless of whether the patient's cannabis cultivation occurs indoors or outdoors.
 - a. To apply for an exception request, the qualified patient or their caregiver must submit the following:
 - i. Completed Exception Request form.

- ii. Proof of legal ownership of the parcel or written documentation from a landlord that the applicant has permission to cultivate medicinal cannabis.
 - iii. Proof of qualified patient. status. Information identifying any patient will not be retained and patient status shall be verified solely for the purposes of ensuring compliance with and eligibility for an Exception for Medicinal Outdoor Cultivation in compliance with Business and Professions Code section 26162(a).
 - iv. Plot plan of the parcel where the medicinal outdoor cultivation will occur, indicating that the outdoor cultivation area is at least ten (10) feet from any property line and within 150 feet of a residence on the parcel.
 - v. Payment of a fee, as established by the Board of Supervisors, to recover the reasonable costs of administering this program.
2. Upon receiving all required information and fees, the County shall provide notice of the Exception for Medicinal Cannabis Exception Request to all contiguous neighbors of the parcel for which the exception is requested. This notice shall provide ten (10) business days for a contiguous neighbor to request a hearing on the Exception Request. In the event no timely request for a hearing is made, the Exception shall be granted. An approved Exception shall expire one (1) year after being granted.
3. In the event a hearing is requested by a contiguous neighbor, the zoning administrator shall set the Exception Request for a hearing. Both the contiguous neighbor and the Exception Request applicant may present relevant evidence and testimony at the hearing
- a. Factors that may be considered by the zoning administrator in granting or denying an Exception Request include, but are not limited to:
 - i. Placement of the outdoor cultivation site in relation to structures on the parcel or on contiguous properties;
 - ii. Physical characteristics of the property proposed for an Exception Request, as well as contiguous properties;
 - iii. The presence of sensitive receptors, such as child care facilities and schools; and
 - iv. History of compliance with County Codes and the existence of any code enforcement cases regarding the property.

- b. In granting an Exception Request, the Zoning Administrator may impose any reasonable conditions upon the outdoor medicinal cannabis cultivation.
- c. Any decision to grant or deny an Exception Request shall be in writing and shall become effective on the date of mailing the decision by U.S. Post.

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, civil, or criminal remedies to enforce this Section.

SECTION IV. Repeal of Section 4 “Interim Prohibition of Outdoor Cultivation of Marijuana for Personal Use” of Ordinance Number 2016-1781.

The Board of Supervisors now repeals section 4 of Ordinance 2016-1781. The remaining sections of Ordinance 2016-1781 shall be unaffected by this action.

SECTION V. 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 VI. 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 VII. 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