

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA

ORDINANCE NO. 4515

**ADOPTION OF TITLE 4, DIVISION 10, CHAPTER 3:
PERSONAL CANNABIS CULTIVATION**

The Board of Supervisors of the County of San Joaquin ordains as follows:

SAN JOAQUIN COUNTY CODE OF ORDINANCES, TITLE 4, DIVISION 10, is amended to add Chapter 3: Personal Cannabis Cultivation which reads as follows:

SAN JOAQUIN COUNTY PERSONAL CULTIVATION ORDINANCE

TITLE 4, DIVISION 10, CHAPTER 3: PERSONAL CANNABIS CULTIVATION

4-20001 - PURPOSE AND INTENT.

It is the purpose and intent of the County in adopting this Chapter to establish regulations regarding personal cannabis cultivation, possession, and processing as allowed under Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) that balance allowed personal cannabis activities with protecting and promoting public health, safety, and welfare of County residents and businesses from any threats they create. The regulations in this Chapter are intended to be robust controls on personal cannabis activities that are effective and enforceable in practice. It is neither the intent nor the effect of this Chapter to condone or legitimize the illegal use, consumption, or cultivation of cannabis under federal, state, or local law.

4-20002 - AUTHORITY.

The County enacts this Chapter pursuant to authority granted to it by Article XI, Section 7 of the California Constitution, Section 11362.2 of the Health and Safety Code, and Sections 25845 and 53069.4 of the Government Code.

4-20003 - FINDINGS.

The Board of the County finds and declares as follows:

- (a) Illegal, unregulated cannabis cultivation creates offensive and irritating odor, especially when the plants are flowering.
- (b) Illegal, unregulated cannabis cultivation often uses chemicals, pesticides, and herbicides, many of which are illegal and extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- (c) Investigations of illegal, unregulated cannabis cultivation are time consuming and dangerous for the County Sheriff's Office, code enforcement officers, environmental health inspectors, and fire officials.

- (d) Illegal, unregulated cannabis cultivation attracts crime and associated violence. In this County and others, cultivation and other illegal, unregulated commercial cannabis activities have been a magnet for thefts, robberies, illegal firearms, shootings, and homicides.
- (e) Illegal, unregulated cannabis cultivation often utilizes illegal, unpermitted electrical wiring for lights and other devices. Further, such cultivation and related processing often utilize pressurized gas cylinders, volatile chemicals, and illegal construction methods. Each of these creates and contributes to a significant threat of fire, which endangers citizens and first responders, including law enforcement, fire, ambulance, code enforcement, and environmental health inspector personnel.
- (f) Outdoor cannabis cultivation is very visible and may be easily accessible to the public, including children and youths.
- (g) Illegal, unregulated cannabis cultivation poses an urgent and immediate threat to the public peace, health, and safety.
- (h) The County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses by implementing and enforcing a robust and effective regulatory framework regarding personal cannabis cultivation while also allowing the legal, regulated cannabis cultivation pursuant to MAUCRSA.
- (i) This Chapter is enacted consistent with the provisions of MAUCRSA.
- (j) Section 130 of MAUCRSA amended Section 11362.2 of the Health and Safety Code to state:
 - (1) In Subsection (b)(1) that a County may enact and enforce reasonable regulations to regulate personal cultivation of cannabis as allowed in paragraph (3) of subdivision (a) of Section 11362.1; and
 - (2) In Subsection (b)(3) that a County may completely prohibit persons from engaging in personal cultivation of cannabis as allowed in paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.
- (k) Nothing in this Chapter shall be deemed to conflict with state or federal law.

4-20004 - DEFINITIONS.

Unless otherwise specified, the following definitions shall be applicable throughout this Chapter and do not amend, replace, or supersede any definition of the same term in any other section of the County Code of Ordinances:

- (a) “Accessory Structure” means an enclosed building with a solid, non-transparent roof and walls affixed to the land that is detached and subordinate to the main private residence on the premises.

- (b) “Premises” means a single, legal parcel. Where contiguous legal parcels are under common possession, such contiguous legal parcels shall be counted as a single "premises" for purposes of this Chapter.
- (c) “Cannabis” means 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 all parts of the plant. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as it now reads or as amended.
- (d) “Commercial” means involving or relating to the buying and selling of goods.
- (e) “Cultivation” means the planting, growing, harvesting, drying, curing, processing, trimming, or storage of one or more cannabis plants or any part or component thereof.
- (f) “Public Nuisance” means anything resulting from unreasonable or unlawful practices or from neglect which is or tends to be injurious to health, safety, or public welfare, or is so unsightly or offensive to the senses as to interfere with the comfortable enjoyment of life or property.
- (g) “Private Residence” means a house, an apartment unit with self-contained heating and ventilation systems, a mobile home, a modular home, or other similar dwelling that complies with County Code of Ordinances Title 8. A private residence does not include transient lodging, group housing, or recreational vehicles.
- (h) “Resident” means any person residing within the private residence.
- (i) “Volatile Solvent” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. This includes, but is not limited to, explosive gases such as butane, propane, xylene, styrene, gasoline, kerosene, tanked oxygen or hydrogen, and dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene.

4-20005 – PERSONAL CULTIVATION RESTRICTIONS.

The personal cultivation and the processing and possession of the cannabis produced by those plants is permitted for persons 21 years of age or older in the unincorporated areas of the county to the extent that such cultivation is authorized by State law and is in strict compliance with this Chapter, including the following requirements:

- (a) **Maximum Plants Per Private Residence or Accessory Structure.** Regardless of how many people reside on the premises, a maximum of six (6) cannabis plants, whether immature or mature, are allowed per private residence. The primary use of the private residence shall remain a residence in compliance with applicable County regulations.

- (b) **Residence or Accessory Structure.** Cultivation and allowed processing must occur within: (1) a private residence, or, alternatively, (2) an accessory structure to a private residence and which has solid, non-transparent walls. Any structure used for cultivation and allowed processing must be legally constructed and maintained in compliance with all applicable County Code of Ordinances Title 8 (Building Regulations) and Title 4, Division 1 (Fire Prevention) requirements and has obtained all required permits, including but not limited to all applicable zoning, grading, building, electrical, mechanical, and plumbing permits.
- (c) **Written Landlord Approval for Rental Residences.** A tenant must have written landlord approval to engage in personal cultivation of cannabis.
- (d) **Outdoor Cultivation and Processing is Prohibited.** No person owning, leasing, occupying, or having charge or possession of any premises within a residential zone or used for residential purposes, shall cause, allow, or permit the outdoor cultivation or processing of cannabis on the premises.
- (e) **Safe Storage.** The cultivation and cannabis produced therefrom is contained within a fully enclosed structure secured by lock and key or other security device which prevents unauthorized entry and is inaccessible to minors.
- (f) **Maximum Size.** Space used to cultivate and process cannabis shall not exceed 100 square feet of the residence or accessory building.
- (g) **Commercial Cultivation is Prohibited.** Cultivation for commercial purposes is prohibited.
- (h) **No Public Visibility.** No cannabis plants, lights, or glare from lights used in cultivation or processing shall be visible from a public right of way or from an adjacent parcel.
- (i) **No Public Nuisance.** No cannabis cultivation shall produce light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.
- (j) **Use of Volatile Solvents is Prohibited.** The use of volatile solvents to process cannabis or to manufacture cannabis products from cannabis is prohibited.
- (k) **Use of Carbon Dioxide is Prohibited.** The use of carbon dioxide from a tank or generator in cultivation or to process or to manufacture cannabis products from cannabis is prohibited.
- (l) **Proper Pesticide Use.** Use or storage of any pesticide in cultivation in a manner that is inconsistent with the label or applicable laws and regulations, or is detrimental to public health, safety, or welfare, is prohibited.
- (m) **Proper Water Use.** The cultivation of cannabis must comply with all ordinances governing water and wastewater use at the federal, state and local levels.

4-20006- CRIMINAL DEFENSE.

Compliance with the requirements of this Chapter does not provide a defense to criminal prosecution under otherwise applicable law.

4-20007- CULTIVATION OVER 6 PLANTS REQUIRES A LICENSE.

If a cultivator intends to cultivate more than 6 cannabis plants they are required to obtain a County commercial cannabis license pursuant to Title 4, Division 10, Chapter 1 prior to such cultivation.

4-20008 - VIOLATIONS.

A violation of this Chapter constitutes an unlawful violation of this Code pursuant to Title 1, Division 2.

- (a) Each violation of this Chapter and each day each violation continues shall constitute a separate violation and be subject to the maximum penalty and any other enforcement remedies available to the County under Title 1, Division 2 and any applicable state or federal statute or pursuant to any other lawful power the County may possess.

4-20009 - ENFORCEMENT.

Enforcement of this Chapter will be done pursuant to Title 1, Division 2 of this Code unless otherwise specified in this Chapter.

4-20010 – ADMINISTRATIVE CIVIL FINE/PENALTY FOR VIOLATION.

Each violation of this Chapter is a separate and distinct unlawful violation subject to the following administrative civil fine/penalty:

- (a) Each violation of this Chapter, except for the violation of growing more than six plants, is subject to an administrative civil fine/penalty of five hundred dollars (\$500.00) per day from the date of the notice of violation and order to abate and continuing for each day thereafter until the violation is abated by whatever means.
- (b) Each cannabis plant in excess of the legal six plant limit is subject to an administrative civil fine/penalty of up to one-thousand dollars (\$1,000) per day from the date of the notice of violation and order to abate and continuing for each day thereafter until the violation is abated by whatever means.
- (c) The administrative fine/penalty amounts shall be cumulative where multiple violation(s) are cited and where multiple administrative citations are issued.

4-20011 – COST RECOVERY.

The County shall be reimbursed for all time, services, and materials needed to abate a violation of this Chapter.

4-20012 - FEES.

The Board shall, by Resolution, adopt a fee schedule for any fees it deems necessary under this Chapter.

4-20013 - REMEDIES CUMULATIVE.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided in this Code and by law. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

4-20014 – CEQA.

The adoption of this Chapter is exempt from the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility of a significant effect from the adoption of these regulations for personal cannabis cultivation.

4-20015 - SEVERABILITY.

If any part or subsection of this Chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this Chapter.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this 7th of August 2018 to wit:

AYES: **Villapudua, Miller, Patti**

NOES: **Winn, Elliott**

ABSENT: **None**

ABSTAIN: **None**

Robert V. Elliott

Robert V. Elliott
Chairman, Board of Supervisors
County of San Joaquin
State of California

ATTEST: MIMI DUZENSKI
Clerk of the Board of Supervisors
County of San Joaquin
State of California

BY: **Mimi Duzenski**