ORDINANCE NO. MC-1466
ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, ADDING CHAPTER 8.99 TO THE SAN BERNARDINO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR THE PERSONAL CULTIVATION OF CANNABIS WITHIN PRIVATE RESIDENCES (DEVELOPMENT CODE AMENDMENT 18-02C)

WHEREAS, the City of San Bernardino, California ("City") is a municipal corporation, duly organized under the Charter of the City of San Bernardino and the Constitution and laws of the State of California; and,

WHEREAS, at the General Election held on November 5, 1996, California voters approved Proposition 215, commonly known as the "Compassionate Use Act of 1996" ("CUA") with the purpose of allowing medical patients to cultivate and use cannabis without fear of State prosecution; and,

WHEREAS, on January 1, 2004, Senate Bill 420 (codified as Health and Safety Code Sections 11362.7, et seq., entitled the "Medical Marijuana Program Act" ("MMPA") went into effect with the purpose of clarifying the scope of the CUA allowing cities and counties to adopt and enforce regulations consistent with the CUA and MMPA; and,

WHEREAS, at the General Election held on November 8, 2016, California voters approved Proposition 64, commonly known as the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"), making it lawful for persons "...21 years of age or older to...possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants" (Health & Saf. Code, § 11362.1(a)) subject to "reasonable regulations" enacted and enforced by the City. (Health & Saf. Code, § 11362.2(b)(1)); and,
WHEREAS, on October 18, 2017, by Resolution No. 2017-211 the Mayor and City Council directed the Citizen’s Advisory Committee on Marijuana (“CAC”) to discuss the issue of personal cultivation in residential zones and, working with City staff and the City’s consultant Hdl, report back to the Mayor and City Council on December 20, 2017; and,

WHEREAS, the Mayor and City Council received the report from the CAC at its regular meeting on December 20, 2017, and determined there was a need for further time to adequately consider regulations on personal cultivation of cannabis; and,

WHEREAS, on December 20, 2017, the Mayor and City Council, seeking to protect the City’s authority to regulate personal cultivation, adopted Ordinance No. MC-1452, establishing a moratorium prohibiting all land use entitlements, building permits, business licenses and any other applicable approval or decisions for outdoor personal cultivation and reserving the right to pass regulations for indoor personal cultivation; and,

WHEREAS, on January 22, 2018, the Mayor and City Council held a public workshop to discuss, among other topics, personal cultivation of cannabis; and,

WHEREAS, on January 22, 2018, the Mayor and City Council opened a duly noticed public hearing on an extension of the moratorium; and,

WHEREAS, on January 22, 2018, the Mayor and City Council continued the public hearing to February 1, 2018 to have additional time for public comment on the moratorium; and

WHEREAS, on February 1, 2018, the Mayor and City Council by a vote of 7-0 voted to extend the moratorium 10 months and 15 days to December 18, 2018 to allow further consideration of regulations on personal cultivation; and,
WHEREAS, on February 1, 2018, the Mayor and City Council directed City staff to expeditiously prepare regulations for personal cultivation within the City of San Bernardino; and,

WHEREAS, personal cultivation within residential zones has caused adverse effects to the health, safety, and welfare of the City’s residents, including violations of the City’s Fire and Building Codes; and,

WHEREAS, there is a need to adopt health, safety and welfare regulations to avoid adverse impacts on the City’s residents that may arise from personal cultivation; and,

WHEREAS, the Mayor and City Council have considered the report of the CAC, City staff recommendations, the report of the City’s consultant, Hdl, on cannabis issues, the viewpoints of stakeholders such as Inland Empire NORML, and extensive public comment to craft this Ordinance; and,

WHEREAS, this Ordinance provides an effective regulatory system for personal cultivation in the City, and will address potential adverse impacts to the public health, welfare, and safety, while allowing residents to engage in personal cultivation in a manner consistent with State law; and

WHEREAS, this Ordinance would allow for indoor cultivation of cannabis in a private residence or accessory structure in a manner that will ensure any cultivation is safe, secure, and does not create a public nuisance to others living in the City; and,

WHEREAS, federal law, codified at 21 U.S.C. Sections 801 et seq., entitled the “Controlled Substances Act” (“CSA”) makes it unlawful to possess any controlled substances, including cannabis, which has, as a Schedule I drug under the CSA, been determined by the
federal government to have a high potential for abuse and no accepted medical value in treatment; and,

WHEREAS, nothing in this Ordinance is intended to authorize the possession, use, or provision of cannabis for purposes that violate federal law.

NOW, THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO DO ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS

The foregoing recitals set forth above are true and correct and are a substantive part of this Ordinance.

SECTION 2. AUTHORITY

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, the Charter of the City of San Bernardino, and State law, including Health and Safety Code Section 11362.2(b)(1), the City of San Bernardino is authorized to adopt ordinances that protect the health, safety and welfare of its residents and businesses. The adoption of reasonable regulations on indoor personal cultivation and prohibition on outdoor personal cultivation is a permissible exercise of this authority.

SECTION 3. ADOPTION OF ORDINANCE

Chapter 8.99, entitled “Personal Cultivation of Cannabis”, of Title 8 “Health and Safety” of the San Bernardino Municipal Code is approved and shall be added to the San Bernardino Municipal Code as follows:

Chapter 8.99
PERSONAL CULTIVATION OF CANNABIS

8.99.010 Purpose and Intent
8.99.020 Applicability
8.99.030 Definitions
8.99.040 Personal Cultivation of Cannabis
8.99.050 Violations Declared a Public Nuisance
8.99.060 Each Violation a Separate Offense
8.99.070 Criminal Penalties
8.99.080 Remedies Cumulative and Not Exclusive
8.99.010 Purpose and Intent
The purpose of this Chapter is to impose reasonable regulatory restrictions on the personal cultivation of cannabis pursuant to State law. This Chapter is not intended to interfere with a patient's right to use medicinal cannabis pursuant to State law, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by State law. This Chapter is not intended to give any person or entity independent legal authority to engage in commercial cannabis activity, as it is intended simply to impose regulatory restrictions regarding personal cultivation of cannabis in the City pursuant to this Code and State law.

8.99.020 Applicability

Nothing in this title shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. Nor shall it be construed, to exempt any activity related to the cultivation of cannabis from any applicable electrical, plumbing, land use or other building or land use standards or permitting requirements. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the San Bernardino County District Attorney's office, the Attorney General of the State of California or the United States of America.

8.99.030 Definitions

A. "City" means the City of San Bernardino, California.

B. "Cannabis" means 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 be discovered, or developed, that has psychoactive or medical properties, whether growing or not, including but not limited to 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" also means marijuana as defined by California Health and Safety Code section 11018 and Business and Professions Code section 26001(f), as both may be amended from time to time. Any reference to cannabis or cannabis products shall include medical and nonmedical cannabis and medical and nonmedical cannabis products, unless otherwise specified. Cannabis or cannabis product does not mean industrial hemp as defined by Health and Safety Code section 11018.5, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. 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.

C. "Cannabis Concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.
D. "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, or sale of cannabis and cannabis products.

E. "Fully Enclosed and Secure Structure" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted in the City of San Bernardino, or, if exempt from permit requirements, that has a complete roof enclosure supported by connecting walls extended from the ground to the roof; a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors and accessible only to the owner or tenant. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inches by four inch or thicker studs overlaid with 3/8-inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical and Fire Codes as adopted by the City of San Bernardino.

F. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, including nurseries.

G. "Personal cultivation" means cannabis cultivation conducted by an individual strictly for that individual's personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended. Personal cultivation also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.

H. "Indoor cannabis cultivation" means cultivation of cannabis using exclusively artificial lighting.

I. "Mixed-light cannabis cultivation" means cultivation of cannabis using any combination of natural and supplemental artificial lighting. Greenhouses, hoop houses, hot houses and similar structures, or light deprivation systems are included in this category.

J. "Outdoor cannabis cultivation" means cultivation of cannabis in the open air using no artificial lighting conducted in the ground or in containers outdoors with no covering.
Outdoor cultivation does not include greenhouses, hoop houses, hot houses or similar structures.

K. "Primary caregiver" shall have the same meaning as set forth in Health and Safety Code Section 11362.7, as the same may be amended from time to time.

L. "Qualifying patient" or "qualified patient" shall have the same meaning as set forth in Health and Safety Code Section 11362.7, as the same may be amended from time to time.

M. "Medical cannabis" or "medicinal cannabis" means cannabis that is intended to be used for medical cannabis purposes in accordance with the Compassionate Use Act ("CUA," Health and Safety Code section 11362.7 et seq.), the Medical Marijuana Program Act ("MMPA," Health and Safety Code section 11362.7 et seq.) and the Medicinal Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA," Division 10 of the Business and Professions Code).

N. "Private Residence" or "Residence" means a house, apartment unit, mobile home or other similar dwelling which is permitted by the City.

8.99.040 Personal Cultivation of Cannabis

A. Indoor cannabis cultivation and mixed-light cannabis cultivation for personal use is permitted within all private residential dwellings and accessory structures to all private residential dwellings within all zoning districts, subject to all of the following minimum standards:

1. All indoor cannabis cultivation and mixed-light cannabis cultivation for personal use, including by a qualified patient or primary caregiver, shall occur in a private residential dwelling or accessory structure to a private residential dwelling, as those terms are defined in Chapter 19.02 of this Code.

2. No more than six (6) cannabis plants may be cultivated by either a qualified patient, primary caregiver, or an individual over twenty-one (21) years old at each private residential dwelling or accessory structure regardless of the number of qualified patients or adults twenty-one (21) and older who reside at such private residential dwelling. Cultivation of more than six (6) plants per residential dwelling or accessory structure shall be considered commercial cannabis activity, not personal cultivation, and shall be subject to all the requirements for commercial cannabis activity within this Code.

3. Medical cannabis shall only be cultivated by:

   i. A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical cannabis to
any other person and who can provide a written doctor’s recommendation to the City upon request; or

ii. A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code Section 11362.765(c).

4. For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons twenty-one (21) years of age or older. The cumulative total of cannabis plants on the property shall not exceed six (6) cannabis plants, regardless of the number of persons residing at the private residential dwelling.

5. Written consent from all owners of the property to cultivate cannabis within the residential dwelling or in a fully enclosed and secure accessory structure shall be obtained and shall be kept on the property, and available for inspection by the Chief of Police or his/her designee upon request. The written consent shall only be valid for twelve (12) months from the signing of the consent.

6. Cannabis cultivation of medical and nonmedical cannabis for personal use may occur inside a private residential dwelling and/or an accessory building or structure on the same parcel, subject to the following restrictions:

i. Structures and equipment used for indoor cannabis cultivation and/or mixed-light cannabis cultivation, such as indoor grow lights, shall comply with all applicable zoning, building, electrical and fire code regulations as adopted by the City.

ii. All accessory buildings and structures used for indoor cannabis cultivation and/or mixed-light cannabis cultivation shall comply with the locational and other requirements set forth in Title 19 of this Code.

iii. Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).

iv. The use of generators to power any cultivation equipment is prohibited.

v. All property improvements, if any, shall comply with the California Building, Electrical and Fire Codes as adopted by the City.
vi. Any fully enclosed and secure structure or residence used for cannabis cultivation shall have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and that shall comply with the Building Code adopted by the City.

vii. No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.

viii. Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.

ix. Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

x. Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in this Code.

xi. The cultivation area shall be in a locked space inaccessible to minors, visitors, vandals, or anyone not authorized to possess cannabis.

7. The area of cultivation shall not adversely affect the health or safety of the occupants of the private residence or the parcel or any other property by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, mold, or other impacts, and shall not be maintained as to constitute a hazard due to use or storage of materials, processes, products or wastes.

8. Cultivation shall not occur within any private residential dwelling containing a day care center, as defined in Chapter 5.10 of this Code.

B. Outdoor cannabis cultivation (i.e. in the open air) is prohibited within all zoning districts.

C. It shall be unlawful for any person to engage in personal cultivation without registering with the City of San Bernardino. The registration shall require the person engaging in personal cultivation to provide their name, address, telephone number, and any other information determined necessary to protect the health, safety, and welfare of the residents and businesses of the City by the City Manager or his/her designee. The registration may require the payment of a fee as set by Resolution of the Mayor and City Council.

8.99.050 Violations Declared a Public Nuisance

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance and may be summarily abated by the City Manager, Chief of Police, or
designee of either of them. The City may recover any nuisance abatement costs and/or administrative fines relating to such violations in accordance with Government Code Sections 38773.1 and 38773.5 in accordance with Chapter 8.30 of this Code.

8.99.060 Each Violation a Separate Offense

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the City of San Bernardino. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, disgorgement and payment to the City for any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity.

8.99.070 Criminal Penalties

Any person causing, permitting, aiding, abetting, suffering or concealing a violation of this Chapter shall be guilty of a misdemeanor, and may, in the discretion of the City Attorney, be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars ($1,000) or imprisonment in the city or county jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense. The City Attorney, in his or her sound discretion, may prosecute a violation of this Chapter as an infraction, rather than a misdemeanor, or reduce or agree to the reduction of a previously filed misdemeanor to an infraction. Any person convicted of an infraction under this provisions of this Chapter shall be punished by a fine not exceeding one hundred dollars ($100) for the first violation, a fine not exceeding two hundred dollars ($200) for a second violation within one year, and a fine not exceeding five hundred dollars ($500) for a third violation within one year. A fourth violation of this Chapter within one year shall be charged as a misdemeanor and may not be reduced to an infraction.

8.99.080 Remedies Cumulative and Not Exclusive

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

SECTION 4. REPEAL OF ORDINANCES

All ordinances related to personal cultivation within the City of San Bernardino are hereby repealed and shall be of no further effect from the effective date of this Ordinance.

SECTION 5. SPECIFIC FINDINGS

The Mayor and City Council, after considering the extensive meetings of the CAC, the Planning Commission, City staff reports, reports from the City’s cannabis consultant HdL, testimony from stakeholders, and public comment, make the following specific findings:
(A) The Ordinance is consistent with the General Plan;
(B) The Ordinance is not detrimental to the public interest, health, safety, convenience, or welfare;
(C) The Ordinance would maintain the appropriate balance of land uses within the City; and
(D) The subject parcel(s) are physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested land use designation(s) and the anticipated land use development(s).

SECTION 6. ENVIRONMENTAL DETERMINATION

The Mayor and City Council of the City of San Bernardino, California, hereby find and determine that this Ordinance is not subject to environmental review under the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in a physical change of the environment, directly or indirectly.

SECTION 7. EFFECTIVE DATE

This Ordinance shall be effective upon the thirty-first (31st) day following its final passage by a majority vote of the Mayor and City Council.

SECTION 8. SEVERABILITY

While it is the intent of the Mayor and City Council to adopt a regulatory system for personal cultivation of cannabis within the City of San Bernardino, if any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The Mayor and City Council declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 9. PUBLICATION

The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance to published as provided by State law.
ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, ADDING CHAPTER 8.99 TO THE SAN BERNARDINO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR THE PERSONAL CULTIVATION OF CANNABIS WITHIN PRIVATE RESIDENCES (DEVELOPMENT CODE AMENDMENT NO. 18-02C)

I HEREBY CERTIFY that the foregoing Ordinance was duly adopted by the Mayor and City Council of the City of San Bernardino at a joint regular meeting thereof, held on the 7th day of March 2018, by the following vote, to wit:

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The foregoing Ordinance is hereby approved this 7th day of March 2018.

Approved as to form:
Gary D. Saenz, City Attorney

By: [Signature]

Georgeann Hanna, CMC, City Clerk

R. Carey Davis, Mayor
City of San Bernardino

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