

ORDINANCE NO. _____

**ORDINANCE AMENDING CHAPTER 9.31 OF TITLE 9 OF THE
MENDOCINO COUNTY CODE ENTITLED
"MEDICAL MARIJUANA CULTIVATION REGULATION"**

The Board of Supervisors of the County of Mendocino ordains as follows:

Chapter 9.31 of Title 9 of the Mendocino County Code is amended to read as follows:

"MEDICAL MARIJUANA CULTIVATION REGULATION"

Section 9. 31.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino by balancing: (1) the needs of medical patients and their caregivers for enhanced access to medical marijuana; (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts; and (3) the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein; (2) allow the use or diversion of marijuana for nonmedical purposes; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California State law.

Section 9.31.020 Findings.

(A) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996").

(B) The intent of Proposition 215 was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not thereby subject to criminal prosecution or sanction. The Act further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."

(C) The State enacted SB 420 in 2004 (codified as Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act of 1996, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the Act, and enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.

- (D) Marijuana plants, whether grown indoors or outdoors, especially as they mature prior to harvest, may produce a distinctive odor that may be detectable far beyond property boundaries.
- (E) Each year since 2004, the Mendocino County Air Quality Management District has received a significant number of formal complaints of odor related to the cultivation of marijuana in residential neighborhoods.
- (F) Marijuana, whether grown for medicinal purposes, or diverted to the black market, may be sold for thousands of dollars per pound.
- (G) The strong smell of marijuana may create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery.
- (H) There have been several marijuana related incidents of burglary, robbery and armed robbery, some including acts of violence resulting in injury or death.
- (I) Marijuana that is grown indoors may require excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, improper maintenance of the generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may create an unreasonable risk of fire and pollution.
- (J) The right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By permitting no more than twenty-five (25) marijuana plants on any one (1) parcel, the County anticipates a significant reduction in the complaints of odor and the risks of fire, crime and pollution described herein.
- (K) The County finds that the indoor or outdoor cultivation of more than twenty-five (25) marijuana plants on any one (1) parcel within the unincorporated area of the County for medicinal purposes will likely result in an unreasonable risk of crime and will likely create odors offensive to persons living nearby notwithstanding the limitations on cultivation that are imposed within this Chapter. The County further finds that the indoor cultivation of more than twenty-five (25) marijuana plants on any one (1) parcel may create an unreasonable risk of fire and/or pollution.

Section 9.31.030 Definitions.

As used herein the following definitions shall apply:

“Attorney General's Guidelines” means Guidelines for the Security and Non-Diversion of marijuana Grown for Medical Use issued by the Attorney General in August 2008.

"Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

“Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

"Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

"Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Medical Marijuana Collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate, store, and/or dispense marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

"Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

"Parcel" means a parcel as determined by the Assessor for assessment purposes only.

"Primary caregiver" means a "primary caregiver" as defined in Health and Safety Code Section 11362.7(d).

"Qualified patient" means a "qualified patient" as defined in Health and Safety Code Section 11362.7(f).

"Residential Treatment Facility" means a facility providing for treatment of drug and alcohol dependency.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Youth-oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a day care or preschool facility.

“Zip-ties” means plastic ties with individualized numbers stamped on them, issued by the Mendocino County Sheriff’s Office for the purpose of identifying a legal marijuana plant.

Section 9.31.040 Limitation on Number of Plants.

The cultivation of more than twenty-five (25) marijuana plants on one (1) parcel, either indoors or outdoors, within the unincorporated area of the County, regardless of whether the person(s) growing the marijuana is/are a "qualified patient", "primary caregiver", or "collective", is hereby prohibited.

Section 9.31.050 Limitation on Location to Cultivate Marijuana.

(A) The cultivation of marijuana, whether grown collectively or individually, in any amount or quantity, shall not be allowed in the following areas:

- (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any “church” or residential treatment facility as defined herein.
- (2) Outdoors within one hundred (100) feet of any occupied legal residential structure located on a separate parcel.
- (3) Outdoors in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
- (4) In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.
- (5) Outdoors within fifty (50) feet of a parcel under separate ownership.

(B) The distance between the above-listed uses in Section (A) (1) and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in Section 9.31.060, or if the marijuana is cultivated indoors, from the nearest exterior wall of the building in which the marijuana is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in Sections (A) (2) and (A) (3) to any residential structure shall be measured from the fence required in Section 9.31.060 to the nearest exterior wall of the residential structure.

Section 9.31.060 Cultivation of Marijuana.

(A) It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within any unincorporated area of the County to cause or allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed within Section 9.31.040.

(B) The indoor cultivation of marijuana plants shall be limited to no more than one hundred (100) contiguous square feet per parcel.

(C) The indoor or outdoor cultivation of marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to objectionable odors.

- (D) The use of light assistance for the outdoor cultivation of marijuana shall not exceed a maximum of six hundred (600) watts of lighting capacity per one hundred (100) square feet of growing area.
- (E) All lights used for the cultivation of marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.
- (F) The indoor or outdoor cultivation of marijuana shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) The indoor or outdoor cultivation of marijuana shall not use diesel generators as a power source.
- (H) The indoor or outdoor cultivation of marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, or river.
- (I) The indoor or outdoor cultivation of marijuana shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (J) All marijuana grown outdoors must be within a secure fence at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (K) All buildings where marijuana is cultivated or stored shall be secured sufficient to prevent unauthorized entry.
- (L) Wherever medical marijuana is grown, a copy of one or more current and valid, State-issued medical marijuana identification card or physician recommendation(s) must be displayed in such a manner as to allow law enforcement officers to easily see the card(s) without having to enter any building of any type.
- (M) Any person who is not the legal owner of a parcel and who is cultivating marijuana on such parcel shall give written notice to the legal owner of the parcel prior to commencing cultivation of marijuana on such parcel.
- (N) Nothing in this Section shall be construed as a limitation on the County's authority to abate any violation which may exist from the cultivation of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

Section 9.31.070 "Zip-Tie" Provision.

- (A) For the convenience of the property owner and to assist in the enforcement of this Ordinance, and to avoid unnecessary confiscation and destruction of medicinal marijuana plants, marijuana grown for medicinal purposes in unincorporated Mendocino County may have "zip-ties" issued by the

Mendocino County Sheriff's Department. For proper identification, such "zip-ties" should be securely attached to the base of individual flowering marijuana plants.

(B) "Zip-Ties" can be obtained through the Mendocino County Sheriff's Department. All applicants for "zip-ties" must present a State-issued medical marijuana identification card or a valid medical recommendation. The fee for the "zip-ties" shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the Master Fee Policy. Any zip-tie fees may be discounted by fifty percent (50%) for Medi-Cal, SSI, and CMSP recipients, and equivalent income-qualified veterans.

9.31.080 Medical Marijuana Collectives.

Medical marijuana collectives shall comply with all of the following:

- (1) Operate on a non-profit basis as set forth in Section B.1. of the Attorney General's Guidelines;
- (2) Employ only persons who are at least eighteen (18) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance, state workers' compensation and liability laws;
- (3) Follow the membership and verification guidelines as set forth in Section B.3. of the Attorney General's Guidelines, except that wherever "should" appears it shall be replaced with "shall";
- (4) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this Section;
- (5) Prohibit sales to non-members as set forth in Section B.5. of the Attorney General's Guidelines;
- (6) Allow reimbursements and allocations of medical marijuana as set forth in Section B.6. of the Attorney General's Guidelines;
- (7) Possess marijuana only in amounts consistent with the medical needs of the members of the collective; and only cultivate marijuana consistent with the limits set forth in this ordinance;
- (8) Exterior signage shall not indicate or advertise the presence or availability of medical marijuana.

Section 9.31.090 Public Nuisance.

A violation of any provision of this Ordinance shall be deemed to be a public nuisance and subject to the enforcement process as set forth in Section 9.31.100.

Section 9.31.100 Enforcement.

(A) The County may abate the violation of this Chapter in accordance with the provisions of County Code Section 8.75 or by the prosecution of a civil action, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings,

prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

(B) The County may also abate the violation of this Chapter through the abatement process established by Government Code Section 25845.

Section 9.31.110 Attorneys' Fees.

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this Section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Chapter exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Section 9.31.120 Use of Money Collected Under This Chapter.

All money collected for penalties for violations of this Chapter and all money collected for recovery of costs of enforcement of this Chapter shall be made available to the Department responsible for the enforcement action for training and further code enforcement actions.

Section 9.31.130 Compliance with CEQA.

The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Section 9.31.140 Severability.

If any provision, word, phrase, section or subsection of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision, word, phrase, section or subsection to other persons or circumstances shall not be affected thereby. To this end, provisions of this ordinance are severable.

Section 9.31.150 Effective Date.

The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect thirty (30) days after passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2012, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
JEANINE B. NADEL, County Counsel

JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy