

ORDINANCE NO. _____

**AN ORDINANCE ADDING CHAPTER 9.30 TO TITLE 9 OF THE
MENDOCINO COUNTY CODE – ADULT USE MARIJUANA CULTIVATION REGULATION
AND AMENDING CHAPTER 9.31 OF TITLE 9 OF THE MENDOCINO COUNTY CODE –
MEDICAL MARIJUANA CULTIVATION REGULATION**

WHEREAS, in 2016, the voters of the State of California approved Proposition 64 amending, repealing and adding sections of the Business and Professions Code, the Food and Agriculture Code, and Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code, and entitled “the Control, Regulate and Tax Adult Use of Marijuana Act” (“AUMA”); and

WHEREAS, AUMA allows the County to enact and enforce reasonable regulations to reasonably regulate the possession and cultivation by a person of not more than six (6) living marijuana plants; and

WHEREAS, the County of Mendocino regulates the cultivation of medical marijuana through Chapters 9.31 and 10A.17 of the Mendocino County Code; and

WHEREAS, the County of Mendocino currently has no ordinance regulating adult use marijuana and desires to adopt reasonable regulations on the cultivation of no more than six (6) marijuana plants pursuant to AUMA; and

WHEREAS, the addition of Chapter 9.30 to the County Code pursuant to this ordinance represents the enacting of reasonable regulations regarding the cultivation of no more than six (6) plants pursuant to AUMA, as they address potential nuisance, environmental and public safety (including potential crime and fire hazards) concerns.

NOW, THEREFORE, the Board of Supervisors of the County of Mendocino ordains as follows:

SECTION 1. Chapter 9.30 is added to Title 9 of the Mendocino County Code and shall read as follows:

"ADULT USE MARIJUANA CULTIVATION REGULATION"

Section 9.30.010 Purpose and Intent.

It is the purpose and intent of this Chapter to immediately regulate the cultivation of adult use marijuana in a manner that is consistent with State law and which is necessary to protect the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino by balancing: (1) the desires of people wishing to cultivate marijuana used for non-medical purposes; and (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts. 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; or (2) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California State law.

This Chapter is enacted pursuant to paragraph (1) of subdivision (b) of California Health and Safety Code § 11362.2, and is intended to regulate the personal cultivation of marijuana as allowed by paragraph (3) of subdivision (a) of California Health and Safety Code § 11362.1.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of adult use marijuana, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Section 9.30.020 Findings.

- (A) In 2016 the voters of the State of California approved Proposition 64 (amending, repealing and adding sections of the Business and Professions Code, the Food and Agriculture Code, and Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code, and entitled “the Control, Regulate and Tax Adult Use of Marijuana Act”).
- (B) The intent of Proposition 64 was to legalize marijuana for those over 21 years old, protect children, Californians and the environment and regulated the cultivation, distribution, sale and use of marijuana. Proposition 64 legalizes the cultivation of not more than six marijuana plants. It further provides that counties may enact reasonable regulations to reasonably regulate said cultivation.
- (C) 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.
- (D) Marijuana may be sold for as much as twelve-hundred dollars (\$1,200.00) per pound, or more.
- (E) 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.
- (F) In recent years there has been an increased number of marijuana related incidents of burglary, robbery and armed robbery, some including acts of violence resulting in injury or death.
- (G) 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.
- (H) In the absence of a formal regulatory framework, marijuana cultivators are less likely to learn of, or implement, guidelines that are protective of the public peace, health and safety.

- (I) The County finds that in the absence of a formal regulatory framework the negative impacts frequently associated with marijuana cultivation are expected to increase, resulting in an unregulated, unstudied and potentially significant negative impact on the environment and upon the public peace, health and safety.
- (J) The County has previously adopted regulations governing the cultivation of medical marijuana. This ordinance imposes regulations on the personal cultivation of marijuana pursuant to Proposition 64.

Section 9.30.030 Definitions.

As used herein the following definitions shall apply:

“Adult use marijuana” means marijuana cultivated pursuant to Proposition 64 and the provisions of this Chapter 9.30.

“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 at a cultivation site of marijuana plants or any part thereof.

“Cultivation site” means a location or locations within a private residence or on the grounds of a private residence where marijuana is planted, grown, harvested, dried, cured, graded, trimmed, or where one does all or any combination of those activities, the total plant canopy of which shall not exceed one hundred (100) square feet.

“Indoors” means cultivation 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.

“Legal parcel” means a lot of real property which was created pursuant to the Subdivision Map Act, or for which a certificate of compliance has been recognized and recorded.

“Marijuana” means all parts of the plant *Cannabis sativa*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may 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.

“Mixed light” means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate adult use marijuana. Included in this definition is the process of solely manipulating natural light to cultivate adult use marijuana.

“Outdoors” or “outdoor cultivation” means any cultivation site that uses no artificial or supplemental lighting to cultivate adult use marijuana. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

“Parcel” means a legal parcel as defined herein.

“Park” means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

“Plant canopy” means the cumulative total of square footage occupied by growing marijuana plants, as determined by calculating the area within the outermost circumference of the canopy of each plant, but does not include aisles or other open areas outside the canopy area of growing marijuana plants.

“Private residence” means a house, apartment unit, mobile home or other similar dwelling.

“Publically traveled private road” means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052 (26).

“Residential Treatment Facility” means a State licensed residential facility that provides treatment for drug and/or alcohol dependency.

“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 licensed preschool or child 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.

“Sheriff” or “Sheriff’s Office” means the Sheriff’s Office of the County of Mendocino or the authorized representatives thereof.

“Wildlife Exclusionary Fencing” means fencing designed and installed to prevent the entry of wildlife into the enclosed area, such as cyclone or field fencing a minimum of six feet high measured from grade that is installed into the ground and secured to prevent animals from burrowing underneath. The fence must include a lockable gate and the gate opening must

include a solid step or apron installed into the ground and secured to prevent animals from burrowing underneath.

“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.

Section 9.30.040 Limitation on Number of Plants.

- (A) A private residence or the grounds of a private residence shall contain no more than one (1) cultivation site. The cultivation site shall contain no more than six (6) adult use marijuana plants.
- (B) Within the cultivation site, a person may also cultivate medical marijuana plants pursuant to the qualified patient/primary caregiver exception of section 10A.17.030, provided that the one hundred (100) square foot area of the cultivation site must contain all plant canopy of the medical marijuana plants and the adult use marijuana plants.
- (C) Persons eligible to cultivate medical marijuana pursuant to Chapter 9.31 may also cultivate adult use marijuana pursuant to this Chapter 9.30; provided, however, that only twenty-five (25) total marijuana plants may be cultivated on the legal parcel, of which six (6) may be set aside as personal cultivation of adult use marijuana.
- (D) A permittee cultivating medical cannabis pursuant to a permit issued pursuant to Chapter 10A.17 that is located on the same legal parcel as the permittee's private residence may also cultivate six (6) adult use marijuana plants pursuant to this Chapter 9.30, which plants shall be identified on the permittee's site plan required pursuant to Chapter 10A.17.090.

Section 9.30.050 Limitation on Location to Cultivate Marijuana.

- (A) The cultivation of adult use marijuana, 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 or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate parcel.
 - (3) Outdoors or using mixed light 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 or using mixed light within fifty (50) feet of a parcel under separate ownership or access easement (whichever is most restrictive).
- (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 9.30.060, 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 9.30.060 to the nearest exterior wall of the residential structure.
- (C) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (1) Cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
 - (2) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (3) The cultivation of adult use marijuana within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to the accessory use regulations of the applicable zoning code.
- (D) Cultivation sites on parcels of less than ten (10) acres in size shall be located only within a fully enclosed structure.

Section 9.30.060 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 in excess of the limitations imposed within section 9.30.040 or in violation of the limitations on location imposed within section 9.30.050 or in violation of any of the following conditions contained in this section.
- (B) The cultivation of adult use marijuana shall be limited to no more than one hundred (100) square feet of total plant canopy within or upon the grounds of any private residence.
- (C) The outdoor, indoor or mixed light cultivation of adult use marijuana shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.

- (D) The use of light assistance for the indoor or mixed light cultivation of adult use marijuana shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of adult use marijuana shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation of adult use marijuana shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of adult use marijuana shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting 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 legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of adult use marijuana shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of adult use marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, or river.
- (H) The activities associated with cultivation of adult use marijuana shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (I) All adult use marijuana grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of 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 the resident 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.
- (J) All buildings where adult use marijuana is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (K) Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device.
- (L) Prohibition on Tree Removal. Removal of any commercial tree species as defined by California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus sp.*) or Tan Oak (*Notholithocarpus sp.*) for the purpose of developing a marijuana cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to safety or disease concerns.
- (M) Any person who is not the legal owner of a parcel and who is cultivating marijuana on such parcel shall obtain written permission to cultivate marijuana

from 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 9.30.070 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 9.30.080.

Section 9.30.080 Enforcement.

- (A) The County may abate the violation of this Chapter in accordance with the provisions of County Code Chapter 8.75, 8.76 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 9.30.90 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 9.30.100 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.

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 2. 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 immediately regulate medical marijuana in a manner that is consistent with State law and which is necessary to protect 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.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of medical marijuana, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, as allowing cultivation of medical marijuana by any qualified patient or primary caregiver in excess of the limits provided by section 10A.17.030 of this Code.

Section 9.31.020 - Confidential Nature of Medical Marijuana Information Legislative Intent.

To the fullest extent authorized by State and Federal law, all use information received by and/or generated by the operation of this Chapter or prior or other iterations of cannabis cultivation ordinances of the County has always been intended to be treated and held by the County as confidential information. Notwithstanding the foregoing, information provided to the county may be released as required by law, judicial order, or subpoena, and could be used in criminal prosecution.

Section 9.31.030 - 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, known as the Medical Marijuana Program Act (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) The Medical Marijuana Program Act defines "primary caregiver" as an individual who is designated by a qualified patient or person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- (E) 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.
- (F) 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.
- (G) Marijuana, whether grown for medicinal purposes, or diverted to the black market, may be sold for as much as twelve-hundred dollars (\$1,200.00) per pound, or more.
- (H) 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.
- (I) In recent years there has been an increased number of marijuana related incidents of burglary, robbery and armed robbery, some including acts of violence resulting in injury or death.
- (J) 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.
- (K) The original enactment of this ordinance in 2008 adopted a limit of no more than twenty-five (25) marijuana plants on any one (1) parcel which was intended to result in a significant reduction in the complaints of odor and the risks of fire, crime and pollution described herein.
- (L) In 2010, in response to complaints that the twenty-five (25) plant per parcel limit was too restrictive and that the overall impact on negative impacts was less than optimal, the County amended this ordinance to allow for an exemption to the twenty-five (25) plant per parcel limitation provided that those seeking the

exemption apply for, obtain, and abide by the conditions of a permit issued by the Sheriff. The exemption required inspection by the Sheriff's Office and compliance with numerous conditions designed to protect the public peace, health and safety, including numerous conditions that required enhanced environmental protection.

- (M) The exemption came to be known as the 9.31 permit program and successfully provided a means for medical marijuana cultivators to be clearly in compliance with state and local law while protecting the public peace, health, and safety, including the environment.
- (N) In 2012, in response to a directive from the United States Department of Justice, the County eliminated the exemption from the twenty-five (25) plant per parcel limit and has not had in place a system of regulatory compliance since that time.
- (O) With the elimination of the exemption from the twenty-five (25) plant per parcel limit, the County also revised the definition of legal parcel from defining an unlimited number of contiguous parcels under common ownership or control as one parcel eligible for a single exemption, to defining any portion of a parcel with a separate Assessor's Parcel number as a parcel, resulting in an individual owner of multiple contiguous parcels being able to cultivate twenty-five (25) marijuana plants times the number of Assessor's Parcel numbers, instead of being limited to no more than ninety-nine (99) plants with an exemption.
- (P) Mendocino County's geographic and climatic conditions; low population density; availability of resource lands previously utilized for forestry and grazing; and history and reputation as a cannabis producing region; have attracted a steady influx of individuals for the purpose of participating in cannabis activity, whether for medical or commercial reasons.
- (Q) The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and the State Department of Fish and Wildlife have documented a dramatic increase in the number of marijuana cultivation sites, corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. These impacts result from the widespread unpermitted, unmitigated, and unregulated impacts of land grading, road development, vegetation removal, timber clearance, erosion of disturbed surfaces and stream banks, stream diversion for irrigation, temporary human occupancy without proper sanitary or waste disposal facilities and threaten the survival of endangered fish species. In addition, the actions of some marijuana growers, either directly or through irresponsible practices, result in the killing of wildlife, including the endangered Pacific Fisher.
- (R) Mendocino County also remains vulnerable to numerous large scale trespass commercial marijuana cultivation operations on public and private lands, yet law enforcement consistently estimates that each year they eradicate no more than ten (10) percent of the marijuana grown in violation of state law.
- (S) Effective enforcement is further hampered by conflicting local, state and federal laws which create ambiguity in determining which marijuana cultivation

operations are legal or not, and whether those that are non-compliant ought to be subject to civil or criminal enforcement.

- (T) On September 11, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which took effect January 1, 2016, and which mandated a comprehensive state licensure and regulatory framework for cultivation, manufacturing, distribution, transportation, testing, and dispensing of medical marijuana on a commercial basis, but implementing regulations have yet to be written and state licenses will not be available until 2018.
- (U) Previous landmark marijuana legislation, including the Compassionate Use Act and the Medical Marijuana Program Act, have precipitated a "green rush" with individuals moving to Mendocino County to grow marijuana; with some seeking to capitalize on ambiguities in the law, while others lack an awareness of community and environmental consciousness.
- (V) Since the adoption of MMRSA numerous sources, including law enforcement, elected officials, county administrators, neighbors and marijuana cultivators have reported numerous inquiries from individuals and entities, both from within and without Mendocino County, who seek to expand their current cultivation operations, or start new ones.
- (W) In the absence of a formal regulatory framework, marijuana cultivators are less likely to learn of, or implement, guidelines that are protective of the public peace, health, safety and the environment; while law enforcement has been deprived of a clear means of distinguishing legally compliant marijuana cultivators from those who threaten the public peace, health, safety and the environment.
- (X) The County finds that in the absence of a formal regulatory framework the negative impacts frequently associated with marijuana cultivation are expected to increase, resulting in an unregulated, unstudied and potentially significant negative impact on the environment and upon the public peace, health and safety.
- (Y) In 2016 the voters of the State of California approved Proposition 64 (amending, repealing and adding sections of the Business and Professions Code, the Food and Agriculture Code, and Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code, and entitled "the Control, Regulate and Tax Adult Use of Marijuana Act"). Proposition 64 allows for the personal cultivation of up to six (6) marijuana plants on the grounds of or within any private residence.

Section 9.31.040 - Definitions.

As used herein the following definitions shall apply:

"Adult use marijuana" means marijuana cultivated pursuant to Proposition 64 and the provisions of Chapter 9.30.

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof.

"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.

"Collective" means "Medical Marijuana Collective," as defined below.

"Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants at a cultivation site of marijuana plants or any part thereof.

"Cultivation site" means a location or locations on one legal parcel where marijuana is planted, grown, harvested, dried, cured, graded, trimmed, or where one does all or any combination of those activities.

"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 cultivation 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 (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two inches (2") x four inches (4") or thicker studs overlain with three-eighths inches (3/8") or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" means a lot of real property which was created pursuant to the Subdivision Map Act, or for which a certificate of compliance was recognized and recorded. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this Chapter.

"Marijuana" means all parts of the plant *Cannabis sativa*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may 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. "Marijuana" includes "cannabis."

"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.

"Mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate marijuana. Included in this definition is the process of solely manipulating natural light to cultivate marijuana.

"Outdoors" or "outdoor cultivation" any cultivation site that uses no artificial or supplemental lighting to cultivate marijuana. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Parcel" means a legal parcel as defined herein.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052 (26).

"Qualified patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 *et seq.*).

"Residential Treatment Facility" means a State licensed residential facility that provides treatment for drug and/or alcohol dependency.

"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 licensed preschool or child 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.

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

"Wildlife Exclusionary Fencing" means fencing designed and installed to prevent the entry of wildlife into the enclosed area, such as cyclone or field fencing a minimum of six (6) feet high measured from grade that is installed into the ground and secured to prevent animals from burrowing underneath. The fence must include a lockable gate and the gate opening must

include a solid step or apron installed into the ground and secured to prevent animals from burrowing underneath.

"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.

"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 9.31.050 - Intentionally Omitted.

Section 9.31.060 - Limitation on Number of Plants.

- (A) The cultivation of more than twenty-five (25) marijuana plants on any legal 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. This limitation shall include any adult use marijuana plants grown pursuant to Chapter 9.30.
- (B) Wherever medical marijuana is grown, a copy of a current and valid, State-issued medical marijuana identification card or physician recommendation must be displayed in such a manner as to allow law enforcement officers to easily see the card without having to enter any building of any type.

Section 9.31.070 - 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 or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate parcel.
 - (3) Outdoors or using mixed light 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 or using mixed light within fifty (50) feet of a parcel under separate ownership or access easement (whichever is most restrictive). (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 9.31.080, 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 9.31.080 to the nearest exterior wall of the residential structure.

- (C) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (1) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (2) The cultivation of marijuana for medical use within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to the accessory use regulations of the applicable zoning code.

Section 9.31.080 - 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 9.31.060 or in violation of the limitations on location imposed within section 9.31.070 or in violation of any of the following conditions contained in this section.
- (B) The indoor cultivation of marijuana plants shall be limited to no more than one hundred (100) square feet per parcel.
- (C) The outdoor, indoor or mixed light cultivation of medical cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The use of light assistance for the indoor or mixed light cultivation of medical cannabis shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of medical cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting 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 legal parcel upon which they are placed.

- (F) All activities associated with the cultivation of marijuana shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, or river.
- (H) The activities associated with cultivation of marijuana shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (I) All medical cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of 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 the cultivator (or their agent) 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.
- (J) All buildings where marijuana is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (K) Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device.
- (L) Prohibition on Tree Removal. Removal of any commercial tree species as defined by California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus sp.*) or Tan Oak (*Notholithocarpus sp.*) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to safety or disease concerns.
- (M) Any person who is not the legal owner of a parcel and who is cultivating marijuana on such parcel shall obtain written permission to cultivate marijuana from 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 9.31.090 - "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 the unincorporated areas of Mendocino County may have "zip-ties" issued by the

Mendocino County Sheriff's Office. 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 Office. 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.

Section 9.31.100 - Medical Marijuana Collectives.

Until such time as State law provides otherwise, medical marijuana collectives operating pursuant to Health and Safety Code section 11362.775 shall comply with all of the following :

- (1) Operate on a non-profit basis as set forth in section IV B.1. of the Attorney General's Guidelines;
- (2) Employ only persons who are at least twenty-one (21) 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 IV 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 IV B.5 of the Attorney General's Guidelines;
- (6) Allow reimbursements and allocations of medical marijuana as set forth in section IV 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 9.31.110 - Intentionally Omitted.

Section 9.31.120 - Intentionally Omitted.

Section 9.31.130 - Public Nuisance.

Notwithstanding any other provision of the Mendocino County Code, including but not limited to section 10A.17.160, cultivating marijuana pursuant to and in compliance with the provisions of this Chapter shall not be deemed a 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 9.31.140.

Section 9.31.140 - Enforcement.

The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

Section 9.31.150 - 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 9.31.160 - 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 9.31.170 - Effectiveness.

The provisions of this Chapter shall not apply in those portions of the unincorporated County where Chapter 10A.17 of this Code would require obtaining a cultivation permit in order to cultivate in excess of the limits of the qualified patient/primary caregiver exemption of section 10A.17.030 of this Code.

SECTION 3. The Board of Supervisors hereby finds and determines that this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15061(b)(3) of the State CEQA Guidelines as it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment, and Section 15308 of the State CEQA Guidelines, as the adoption of this ordinance is taken to assure protection of the environment. This finding and determination is based on the evidence in the record for this ordinance, including the staff memorandum accompanying this ordinance. The Board of Supervisors hereby authorizes and directs the filing of a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION 4. 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.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2017, 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:
KATHARINE L. ELLIOTT,
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