

ORDINANCE NO.

**AN 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"**

**Sec. 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.

**Sec. 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. Pursuant to the California Compassionate Use Act of 1996, enacted by the voters of the State of California on November 5, 1996 and implementation statutes such as California Health & Safety Code section 11362.71, the County of Mendocino Board of Supervisors hereby finds and declares that all use information received by and/or generated by the operation of Chapter 9.31 is and always has been intended to be treated and held by the

~~County of Mendocino as confidential information to the fullest extent authorized by California and Federal law from 2008 to the present as well as prospectively. This is a declaration of past, current and prospective legislative intent for all versions of Chapter 9.31 dating back to 2008.~~

Sec. 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) In response to increased competition from other areas, and an overall downward trend in prices; otherwise law abiding marijuana cultivators have increasingly raised their plant count above the twenty five (25) plants legally permitted per parcel, but the civil remedies available to enforce violations of this ordinance have proven to be time consuming, expensive, cumbersome, and of limited effectiveness.~~
- (SR) 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.

| ~~(TS)~~ 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.

| ~~(UI)~~ 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.

| ~~(VU)~~ 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.

| ~~(WV)~~ 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.

| ~~(XW)~~ 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.

| ~~(YX)~~ 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.

| ~~(ZY)-~~ 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.

#### Sec. 9.31.040 - Definitions.

As used herein the following definitions shall apply:

| "Adult use marijuana" means marijuana cultivation and use permitted by 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, means the Mendocino County Agricultural Commissioner's Office 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. ~~"and also means collectives, individual members thereof, or individual patients, in any combination, who apply for and obtain an exemption as set forth in section 9.31.110.~~

"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.

~~"Equivalent square footage" means a one hundred (100) square foot area within any structure using the mixed light or light deprivation method of cultivation, that contains live plants and for which one (1) zip-tie shall be purchased.~~

"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 ~~using one hundred percent (100%) artificial lighting~~ 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~~means a parcel of land for which one (1) legal title exists.~~ 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.

~~"Light deprivation" means a method of cultivation commonly using a greenhouse or hoop house that relies on supplementing and/or manipulating natural light to induce earlier flowering.~~

"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.~~"light deprivation".~~

"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. ~~means cultivation in any location or by any means that is not "indoors" within a fully enclosed and secure structure as defined herein.~~

"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, ~~a "primary caregiver"~~ 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).

~~"Proof of prior cultivation" shall mean evidence satisfactory to the Sheriff that, no later than May 17, 2016, the registrant or applicant has taken demonstrable steps toward the development of a commercial medical cannabis cultivation site on the parcel as demonstrated by the criteria described in either (a) or (b) below and by at least one (1) of the criteria described in (c) through (k):~~

- ~~(a) Date-stamped photographic evidence of grading and/or earthmoving commensurate with the area proposed to be cultivated.~~
- ~~(b) Date-stamped photographic evidence of cultivation commensurate with the area proposed to be cultivated.~~
- ~~(c) Date-stamped receipts for equipment and supplies in types and quantities commensurate with commercial cannabis cultivation in the area proposed to be cultivated.~~
- ~~(d) A signed contract with a medical cannabis dispensary, distributor, or other medical cannabis business located in California which contains evidence that it was fully executed no later than May 17, 2016, and which contains notification information or other evidence linking the registrant to the address of the parcel for which registration is sought. The contract must include the name, address, and phone number of each individual or entity that executed the contract.~~
- ~~(e) Receipt of a valid, unexpired business license pursuant to Chapter 6.04 of the Mendocino County Code in conjunction with additional evidence linking the registrant's~~



~~business to a medical cannabis cultivation site on the parcel for which cultivation is sought.~~

- ~~(f) Documents of incorporation and/or registration with the California State Board of Equalization containing evidence that an established medical cannabis cultivation operation existed on the parcel to be registered no later than May 17, 2016.~~
- ~~(g) Receipt of a State seller's permit pursuant to California Revenue and Taxation Code §6001 et seq. no later than May 17, 2016 in conjunction with additional evidence such as printed business cards, checks, or stationery demonstrating that the business is related to medical cannabis.~~
- ~~(h) Dated and fully executed documentation of current compliance or intent to comply with Water Quality Control Board regulations related to medical cannabis.~~
- ~~(i) Insurance documents demonstrating that an established medical cannabis cultivation operation existed on the parcel to be registered prior to May 17, 2016.~~
- ~~(j) Documentation of taxes paid to the State Board of Equalization no later than May 17, 2016 for the cultivation operation on the site at issue.~~
- ~~(k) Any similarly reliable documentary evidence satisfactory to the Sheriff that establishes that medical cannabis was planted and grown on the parcel to be registered prior to May 17, 2016.~~

"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.).~~a "qualified patient" as defined in Health and Safety Code section 11362.7(f).~~

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

Sec. 9.31.050 - ~~Registration Requirement~~Intentionally Omitted.

~~Within sixty (60) days of adoption of this ordinance any qualified patient, primary caregiver, collective or other entity cultivating marijuana within the unincorporated area of Mendocino County may register with the Mendocino County Agricultural Commissioner's Office. Registrants shall be entitled to priority processing for future permit applications. Applicants for a permit for an exemption as set forth in section 9.31.110 shall be deemed to have registered and shall be entitled to the highest priority processing for future permit applications.~~

~~Registration shall be on a form provided by the Agricultural Commissioner's Office and at a minimum shall require the name and mailing address of the registrant; the location address and Assessor's Parcel Number of the cultivation location; and a statement that the registrant began cultivating medical marijuana at the location address on or before January 1, 2016. Proof of prior cultivation will need to be submitted at the time of registration or permit application.~~

Sec. 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. ~~unless cultivated by individuals, collectives, or members thereof who apply for, obtain, and are in compliance with a permit for an exemption as set forth in section 9.31.110.~~ 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 ~~except as set forth in section 9.31.110.~~

Sec. 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.

#### Sec. 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) ~~contiguous~~ square feet per parcel. ~~and shall not rely on diesel generators for a source of power.~~

(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. ~~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 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. ~~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 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. ~~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) ~~All activities associated with the~~ ~~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~~ 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~~ ~~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.
- (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. ~~All marijuana grown outdoors must be contained within wildlife exclusionary fencing 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.~~
- (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.
- (~~ML~~) 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 ~~give written notice to~~ the legal owner of the parcel prior to commencing cultivation of marijuana on such parcel.
- (~~NM~~) 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.

#### Sec. 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 ~~Department~~ Office. For proper identification, such "zip-ties" should be securely attached to the base of

individual flowering marijuana plants ~~or to the interior of any structure containing equivalent square footage as specified in section 9.31.110 (E) (12).~~

- (B) "Zip-Ties" can be obtained through the Mendocino County Sheriff's ~~Department~~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, ~~except as required by section 9.31.110 (E) (12),~~ may be discounted by fifty percent (50%) for Medi-Cal, SSI, and CMSP recipients, and equivalent income-qualified veterans.

Sec. 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 Medical marijuana collectives engaged in cultivation in the unincorporated areas of Mendocino County 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.

Sec. 9.31.110 - ~~Requirements for Exemption from the Twenty-five (25) Plants per Parcel Limitation~~Intentionally Omitted.

~~(A) Medical marijuana growing collectives, individual members thereof, or individual patients who were cultivating marijuana in Mendocino County on or before January 1, 2016, and who possess a valid doctor's recommendation may be granted an exemption from the limitations set forth in section 9.31.080 provided they apply for and obtain a permit from the Mendocino County Sheriff's Office. Any legal parcel for which an exemption is sought shall be a minimum of five (5) acres in size provided the permitted amount does not exceed fifty~~

~~(50) plants or the equivalent square footage, and ten (10) acres in size provided the permitted amount does not exceed ninety-nine (99) plants or the equivalent square footage. Under no circumstances shall the permitted amount exceed ninety-nine (99) plants or the equivalent square footage per legal parcel. An applicant may seek an exemption for plants only, equivalent square footage only, or a combination thereof provided the number of plants and total equivalent square footage is disclosed as provided in section (B) (7) below. Tenants in common who reside in separate residences on a legal parcel may apply for and obtain individual permits provided all other conditions are met and the cumulative number of plants or equivalent square footage cultivated thereto does not exceed the amount that would be allowed to a single applicant applying for a permit on the same parcel. A separate permit application shall be required for each parcel for which permission to exceed the twenty-five (25) plants per parcel limitation is sought. All permits shall be site specific and once issued shall not be transferred or sold. All permits are subject to annual renewal.~~

~~(B) The permit procedure shall include an application, which shall set forth, under penalty of perjury, all of the following:~~

- ~~(1) The name and address of each person applying for the permit and any other person who will be engaged in the management of the collective;~~
- ~~(2) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in the management of the collective;~~
- ~~(3) Written evidence that each person applying for the permit and any other person who will be engaged in the management of the collective is at least twenty-one (21) years of age;~~
- ~~(4) That the applicant or any individual engaged in the management of, or employed by, the collective has not been convicted of a violent felony as defined in Penal Code section 667.5 (c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5 (c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;~~
- ~~(5) A statement acknowledging that the permit applied for will be issued in conformance with the laws of the State of California and that such issuance does not confer upon the applicant, managers, employees and members of the collective immunity from prosecution under federal law;~~
- ~~(6) The applicant's waiver and release of the County from any and all legal liability related to or arising from the application for a permit or the enforcement of the conditions of the permit;~~
- ~~(7) The location of the parcel where the cultivation of medical marijuana will occur and proof of prior cultivation on the site on or before January 1, 2016;~~
- ~~(8) The number of plants and/or the equivalent square footage for which an exemption is sought and the measures that will be taken to minimize odor-related complaints, or a statement explaining why such measures are not necessary;~~
- ~~(9) Proof that the owner of the property, if other than the applicant, has been notified as set forth in section 9.31.080 (M);~~

- ~~(10) A statement that the requested use will not violate the limitation locations set forth in section 9.31.070;~~
- ~~(11) A statement that the requested use will not violate the fencing requirements set forth in section 9.31.080 (l);~~
- ~~(12) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft;~~
- ~~(13) A statement describing the proposed source of power for indoor and/or outdoor cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site;~~
- ~~(14) If diesel generators are proposed to be used on site, a detailed description of the proposed methods of storage, delivery and containment of the diesel fuel must be included;~~
- ~~(15) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or Partnership Agreement shall be attached to the application;~~
- ~~(16) The applicant shall provide proof of either, a physician recommendation that the amount to be cultivated is consistent with the applicant's medical needs, the needs of the patients for whom the applicant is a caregiver, or a written agreement or agreements, that the applicant is authorized by one (1) or more medical marijuana dispensing collectives to produce medical marijuana for the use of the members of said collective or collectives;~~
- ~~(17) A statement that the requested use will not utilize water that has been or is illegally diverted from any stream, creek, or river;~~
- ~~(18) A statement describing the measures that will be taken to prevent erosion or contaminated runoff into any stream, creek or river, or an explanation of why such measures are not necessary;~~
- ~~(19) Submission of payment of a permit fee sufficient to cover the cost to all County departments of investigating and processing the application in an amount that shall be set by the Board of Supervisors in accordance with all applicable laws and regulations;~~
- ~~(20) That upon receiving a completed permit application for an exemption from the twenty-five (25) plants per legal parcel limitation, the Sheriff may refer the application to the Department of Planning and Building to verify the zoning, parcel size, surrounding uses and other relevant information;~~
- ~~(21) That the Sheriff is hereby authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application;~~
- ~~(22) Authorization for the Sheriff, Fire District, and/or other appropriate County employees or agents or their designees, including building and fire inspectors, to enter the~~

~~property only during normal business hours for the purpose of examining the location to confirm compliance with this section.~~

~~(C) No permit shall be issued if the Sheriff finds:~~

- ~~(1) That the applicant has provided materially false documents or testimony; or~~
- ~~(2) That the applicant has not complied fully with the provisions of this Chapter; or~~
- ~~(3) That the operation as proposed by the applicant, if permitted, would not have complied with all applicable laws, including, but not limited to, the Building, Planning, Housing, Fire, and Health Codes of the County, including the provisions of this Chapter and regulations issued by the Sheriff pursuant to this Chapter.~~

~~(D) All permits shall be issued within ten (10) business days from completion of inspection by the Sheriff as set forth herein, or from receipt of report if inspected by a third party inspector as defined herein.~~

~~(E) Medical marijuana collectives and individual permittees granted an exemption as specified herein 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) Apply for and obtain a County business license from the office of the Treasurer-Tax Collector;~~
- ~~(3) Apply for and obtain a Board of Equalization Seller's Permit and collect and remit sales tax to the Board of Equalization if they intend to sell directly to qualified patients or primary caregivers;~~
- ~~(4) 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;~~
- ~~(5) 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";~~
- ~~(6) 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;~~
- ~~(7) Prohibit sales to non-members as set forth in section B.5. of the Attorney General's Guidelines;~~
- ~~(8) Allow reimbursements and allocations of medical marijuana as set forth in section B.6. of the Attorney General's Guidelines;~~
- ~~(9) Possess marijuana only in amounts consistent with the medical needs of the members of the collective; and only cultivate marijuana consistent with the limits of the exemption granted pursuant to a permit issued in conformance with this section, but in no case, more than ninety-nine (99) plants per parcel;~~
- ~~(10) Indoor marijuana cultivation shall be limited to a single indoor growing area that shall not exceed one hundred (100) contiguous square feet per legal parcel;~~



- ~~(11) Secure all buildings where marijuana is cultivated or stored, sufficient to prevent unauthorized entry;~~
- ~~(12) Purchase a zip-tie for each flowering marijuana plant or equivalent square footage that is grown in compliance with a permit that has been issued pursuant to a request for exemption. Zip-ties purchased for individual flowering marijuana plants shall be securely attached to the plant. Zip-ties purchased for equivalent square footage shall be securely attached to the interior of the structure in which cultivation takes place, in a location and manner that is immediately visible upon entering. Zip-ties required pursuant to this section shall not be eligible for any of the discounts provided for in section 9.31.090 (B);~~
- ~~(13) In lieu of the requirements of section 9.31.040 (B), display copies of the permit issued pursuant to this section, in a conspicuous place at the entrance to each garden area and immediately inside the entrance to any building where medical marijuana is cultivated, processed, or stored;~~
- ~~(14) Cultivated marijuana plants shall not be visible from the public right of way, or from publicly traveled private roads;~~
- ~~(15) Exterior signage shall consist only of the site address;~~
- ~~(16) Traffic to the site shall be limited to employees and/or members who are essential to the cultivation of medical marijuana;~~
- ~~(17) 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;~~
- ~~(18) All weighing and measuring devices shall be inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.~~
- ~~(F) As an alternative to the on-site inspection by the Sheriff called for in section 9.31.110 (B) (22) of this Ordinance, the permittee may, at their expense, select a qualified third party inspector from a list that shall be established and maintained by the Sheriff and who shall be authorized to conduct said inspection. Nothing herein shall limit the ability of Fire District or County employees or agents from entering the property to conduct inspections otherwise authorized by law or limit the ability of the Sheriff to make independent compliance checks. The Sheriff shall determine the criteria for establishing the list of third party inspectors and may request any information specified in section 9.31.110 (B) of this Ordinance or any other information the Sheriff deems reasonably related to verification of the qualifications of the third party inspector. The third party inspector shall submit a detailed written report to the Sheriff regarding each of the items inspected/verified, including recommendations for improvements to the operation.~~
- ~~(G) The third party inspector, as authorized by the Sheriff, shall inspect and verify all of the following:
  - ~~(1) The identity of the person(s) assisting in the inspection and their relationship to the applicant/collective.~~
  - ~~(2) That the address and/or location of the parcel conforms to that specified in the application.~~
  - ~~(3) That exterior signage is limited to the address of the location.~~
  - ~~(4) The precise location(s) where the marijuana is to be cultivated, processed and/or stored.~~~~

- ~~(5) The location, if any, where marijuana is to be grown indoors, that it not exceed a single space of not more than one hundred (100) contiguous square feet, the source of power, the number and wattage of lights, and any indicia of substandard electrical conditions.~~
- ~~(6) That marijuana cultivated on the site will not violate the limitation locations set forth in section 9.31.070.~~
- ~~(7) That marijuana cultivated on the site will not violate the fencing requirements set forth in section 9.31.080 (I).~~
- ~~(8) That marijuana cultivated on site will not violate the prohibition on objectionable odors set forth in section 9.31.080 (G).~~
- ~~(9) That marijuana cultivated on site will not violate the lighting requirements and limitations set forth in sections 9.31.080 (D) and (E).~~
- ~~(10) That the security measures for the site are sufficient to ensure the safety of members and employees and protect the premises from theft.~~
- ~~(11) That all buildings where marijuana is cultivated or stored are secured sufficiently to prevent unauthorized entry.~~
- ~~(12) The source of power for indoor and/or outdoor cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site;~~
- ~~(13) That the diesel generators, fuel and waste oil, if any, to be used on site are stored, delivered and contained as specified in the application.~~
- ~~(14) That the site does not utilize water that has been or is illegally diverted from any stream, creek or river.~~
- ~~(15) That appropriate measures have been taken to prevent erosion or contaminated runoff into any stream, creek or river.~~
- ~~(16) That upon any subsequent inspection copies of the permit are displayed in conformance with section 9.31.110 (E) (13).~~
- ~~(17) That zip ties are properly attached to any flowering marijuana plant or structure containing equivalent square footage of marijuana plants grown in compliance with the permit specified in this section.~~
- ~~(18) That a valid County business license has been obtained from the office of the Treasurer-Tax Collector.~~
- ~~(19) That a Board of Equalization Seller's Permit has been obtained if the permittee intends to sell directly to qualified patients or primary caregivers.~~
- ~~(20) That the applicant has sufficient collective membership, or is a member of and has an agreement with one (1) or more dispensing collectives sufficient to account for the total amount of marijuana produced or estimated to be produced pursuant to a permit issued in conformance with this section.~~
- ~~(21) That the applicant has established procedures and systems sufficient to do all of the following:~~

- ~~(a) comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or deductions for unemployment insurance, state workers' compensation and liability laws;~~
- ~~(b) comply with the membership and verification guidelines as set forth in section B.3. of the Attorney General's Guidelines;~~
- ~~(c) maintain records of the signed membership applications of all members;~~
- ~~(d) maintain records of the total amount of marijuana produced;~~
- ~~(e) track and report all sales subject to sales tax;~~
- ~~(f) prevent sales or diversion to non-members as set forth in section B.5. of the Attorney General's Guidelines;~~
- ~~(g) allow reimbursements and allocations of medical marijuana as set forth in section B.6. of the Attorney General's Guidelines.~~

**Sec. 9.31.120 - Appeal from Denial of Permit or Renewal**Intentionally Omitted.

~~The Sheriff's Office shall review all permit and renewal applications, and all other relevant information, and determine, based on current information, if the permit should be granted or renewed. If the Sheriff's Office determines that the permit should not be granted or renewed, the reasons for such denial shall be in writing. The applicant shall then have fourteen (14) business days to correct the reasons for denial and request a re-inspection of the property. The cost of any re-inspection shall be borne by the applicant. The applicant may appeal such decision by filing a written notice with the Clerk of the Board of Supervisors within ten (10) days stating the grounds for the appeal. Such notice of appeal shall be accompanied by the payment of an appeal fee which shall be set by resolution of the Board of Supervisors in accordance with all applicable laws, regulations and the Master Fee Policy. If a notice of appeal is not filed and the required fee paid within the ten (10) day appeal period, the decision of the Sheriff's Office shall be final.~~

**Sec. 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.

**Sec. 9.31.140 - Enforcement.**

- ~~(A) 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. The County may abate the violation of this Chapter in accordance with the provisions of County Code Chapter 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.~~

#### Sec. 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.

#### Sec. 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.

#### ~~Sec. 9.31.170 - 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).~~

#### ~~Sec. 9.31.180 - 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.~~

#### Sec. 9.31.1790 - 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.~~The amendments to this Chapter 9.31 enacted by Urgency Ordinance on May 17, 2016 shall sunset when replaced or superseded by alternate medical marijuana cultivation provisions, but not later than June 30, 2017, whichever comes first.~~