

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 adult use 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~~enacts reasonable regulations regarding the cultivation of no more than six (6) adult use marijuana 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 (~~\$1,500.00~~, ~~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 non-medical adult use marijuana pursuant to Proposition 64.

Section 9.30.030 Definitions.

As used herein the following definitions shall apply:

“Adult use marijuana” means non-medical 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 “adult use marijuana” and also 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 Limitations on Cultivation of Adult Use Marijuana~~Number of Plants.~~

- (A) ~~Cultivation of adult use marijuana in A private residence or on~~ the grounds of a private residence ~~or accessory structure may~~ shall contain ~~no one or more than one (1)~~ cultivation sites. ~~The cultivation site shall contain~~ containing no more than six (6) adult use marijuana plants ~~with a total plant canopy not to exceed 100 square feet.~~

- (B) Cultivation of adult use marijuana on a parcel where~~Within the cultivation site, a person may also cultivate~~ medical marijuana plants are being cultivated pursuant to the qualified patient/ or primary caregiver ~~exemption~~exception of section 10A.17.030, shall not be used to increase the total square footage of cannabis that may be cultivated thereon but shall be contained within the square footage allowed pursuant to said exemption~~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) Cultivation of adult use marijuana on a parcel where ~~Persons eligible to cultivate~~ medical marijuana plants are being cultivated pursuant to Chapter 9.31 shall not be used to increase the~~may also cultivate adult use marijuana pursuant to this Chapter 9.30; provided, however, that only twenty-five (25) total number of marijuana plants that may be cultivated on the legal parcel, but up to of which six (6) of the total allowed number of twenty-five (25) plants~~ may be set aside as personal cultivation of adult use marijuana.
- ~~(D)~~ Cultivation of adult use marijuana is allowed on a parcel where ~~A permittee cultivating medical cannabis is cultivated pursuant to a permit issued pursuant to Chapter 10A.17 provided that the person or persons cultivating the adult use marijuana reside thereon, the adult use marijuana plants do not exceed six in number or 100 square feet of total plant canopy 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 and the~~ plants shall be identified on the ~~permittee's~~ site plan required pursuant to Chapter 10A.17.090.
- ~~(D)~~(E) Cultivation of adult use marijuana on any parcel less than ten (10) acres in size shall only be allowed indoors as defined in this Chapter.

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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.