AN ORDINANCE OF THE COUNTY OF BUTTE ADDING ARTICLE I, ENTITLED
“NONMEDICAL MARIJUANA ORDINANCE” OF CHAPTER 34C ENTITLED
“NONMEDICAL MARIJUANA ORDINANCE,” OF THE BUTTE COUNTY CODE

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

Section 1. Chapter 34C is added to the Butte County Code as follows:

CHAPTER 34C NONMEDICAL MARIJUANA ORDINANCE

34C-1 Authority and Title. Pursuant to the authority granted by
Article XI, section 7 of the California Constitution, Health and
Safety Code section 11362.2, and Government Code section 25845,
the Board of Supervisors does enact this Chapter, which shall be
known and may be cited as the “Butte County Nonmedical Marijuana
Ordinance.”

34C-2 Findings and Purpose.

(a) In 2016, voters of the State of California approved
Proposition 64, entitled The Control, Regulate and Tax Adult Use
of Marijuana Act (the “Adult Use of Marijuana Act” or the “AUMA”).

(b) The stated purpose of the AUMA is to establish a
comprehensive system to legalize, control and regulate the
cultivation, processing, manufacture, distribution, testing, and
sale of nonmedical marijuana, including marijuana products, for
use by adults 21 years and older, and to tax the commercial growth
and retail sale of marijuana.
(c) The AUMA creates a licensing scheme whereby the State will issue licenses to businesses authorizing them to cultivate, distribute, transport, store, manufacture, process, and sell nonmedical marijuana and marijuana products for adults 21 years of age and older, with such licenses expected to be issued by January 1, 2018.

(d) The AUMA states that nothing in it shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the AUMA. The AUMA allows local governments to ban nonmedical marijuana businesses, and mandates that the State licensing authorities shall not approve an application for a State license if approval of the State license will violate the provisions of any local ordinance or regulation adopted in accordance with the requirements of the AUMA.

(e) The AUMA provides that it shall be lawful under state and local law for persons 21 years of age and older to plant, cultivate, harvest, dry, or possess not more than six marijuana plants, and possess the marijuana produced by the plants, subject to the following restrictions: 1) A person shall plant, cultivate, harvest, dry or possess plants in accordance with local ordinances; 2) the plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of a private residence, in a locked space, and not visible by normal unaided vision from a public place; and 3)
not more than six plants may be planted, cultivated, harvested, 
dried, or processed within a single private residence, or upon the 
grounds of a private residence, at any one time.

(f) The AUMA allows a county to enact and enforce “reasonable 
regulations” to regulate the possession, planting, cultivation, 
harvesting, drying, or processing of the six marijuana plants, as 
well as the possession of the marijuana produced by the plants.

(g) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is 
defined as a drug or other substance that has a high potential for 
abuse, has no currently accepted medical use in treatment in the 
United States, and has not been accepted as safe for use under 
medical supervision. The Federal Controlled Substances Act makes 
it unlawful, under federal law, for any person to cultivate, 
manufacture, distribute or dispense, or possess with intent to 
manufacture, distribute or dispense, marijuana. The Federal 
Controlled Substances Act contains no exemption for the 
cultivation, manufacture, distribution, dispensation, or 
possession of marijuana for medical or nonmedical purposes.

(h) In a series of memoranda issued in October 2009, June 
2011, and August 2013, the U.S. Department of Justice provided 
guidance to federal prosecutors concerning marijuana enforcement 
under the Controlled Substances Act, and generally advised that it 
is not likely an efficient use of federal resources to prosecute 
those persons or entities acting in compliance with a strong and
effective state regulatory system for the cultivation and
distribution of marijuana. These guidelines are understood to
allow states to legalize marijuana so long as the state laws
adequately address the following goals of preventing: (1)
distribution of marijuana to minors; (2) revenue from the sale of
marijuana going to criminal enterprises; (3) diversion of
marijuana from states where it is legal under state law to other
states; (4) state authorized marijuana activity from being used as
a cover for the trafficking of other illegal drugs; (5) violence
and the use of firearms in the cultivation and distribution of
marijuana (6) drugged driving and the exacerbation of other adverse
public health consequences associated with marijuana use; (7)
growing of marijuana on public lands and the attendant public
safety environmental dangers; and (8) possession or use of
marijuana on federal property.

(i) The County’s geographic and climatic conditions, which
include dense forested areas that receive substantial
precipitation, along with sparse population in many areas of the
County, provide conditions that are favorable to outdoor marijuana
cultivation. Outdoor marijuana growers can achieve a high per-
plant yield because of the County’s favorable growing conditions.

(j) The County has a compelling interest in protecting the
public health, safety, and welfare of its residents and businesses,
and preserving the peace and integrity of the unincorporated areas
in the County. In the past, significant concerns have been raised
regarding the land use impacts that the possession, planting, cultivation, harvesting, drying, processing, distributing, transporting, storing, manufacturing, and sale of marijuana will have on the public health, safety, and welfare of the residents of Butte County, and the environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation.

(k) Cultivation of marijuana at locations or premises within six hundred (600) feet of school bus stops or one thousand (1,000) feet of schools, school evacuation sites, churches, parks, childcare centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered, and therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

(l) It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of nonmedical marijuana in a manner that is consistent
with State law, and in a manner that promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Butte.

(m) It is also the purpose and intent of this Chapter to provide a complaint-driven civil process to remedy nuisances related to nonmedical marijuana cultivation.

34C-3 Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

(a) “Accessory structure” means a fully enclosed structure that is located on the grounds of a “private residence,” and is detached from the “private residence,” as that term is defined herein.

(b) “Child Care Center” means any licensed child care center, daycare center, or childcare home, or any preschool.

(c) “Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

(d) “Code Enforcement Officer” means any person employed by the County of Butte and appointed to the position of code enforcement officer.

(e) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
(f) “Enforcing Officer” means the Code Enforcement Officer or his or her authorized deputies or designees, each of whom is independently authorized to enforce this Chapter.

(g) “Fence” means a wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials approved by the Department of Development Services for the purpose of enclosing space or separating parcels of land. The term “fence” does not include retaining walls.

(h) “Indoors” means entirely within a “private residence” or “accessory structure” as defined herein.

(i) “Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(j) “Marijuana” has the same meaning as in Section 11018 of the California Health & Safety Code.

(k) “Outdoors” means any location that is not "indoors" as defined herein.

(l) “Parcel” means a "legal parcel" as defined herein.

(m) “Premises” means a single, legal parcel of property that includes an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Sections 34C-6 and 34C-7.

(n) “Private residence” means a house, apartment unit, mobile home, or other similar dwelling.
(o) “Residential treatment facility” means a facility providing for treatment of drug and alcohol dependency, including any “sober living facility” run by treatment providers for the benefit of transitional living.

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

(q) “School Bus Stop” means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.

(r) “School Evacuation Site” means any location designated by formal action of the governing body, Superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of an emergency or other incident at the school.

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

34C-4 Nuisance Declared; Cultivation Restrictions.

(a) The cultivation of marijuana that is not in compliance
with the requirements set out in this Chapter is hereby declared
to be unlawful, and a public nuisance, which may be abated in
accordance with this Chapter.

     (1) Not more than six marijuana plants may be cultivated
indoors, or in an outdoor garden located upon the grounds of a
private residence, at any one time.

     (2) If the premises is less than five (5) acres in size, the
cultivation of not more than six marijuana plants, and the
possession of the marijuana produced by the plants, shall only
take place indoors, and in one contiguous space.

     (3) If the premises is five (5) acres in size or greater,
the cultivation of not more than six marijuana plants, and the
possession of the marijuana produced by the plants, may take place
either indoors, or in an outdoor garden located on the grounds of
a private residence. The entire cultivation must take place in
one contiguous space.

(b) For cultivation to be permissible inside an accessory
structure, the accessory structure must: 1) comply with the
California Building Standards Code (Title 24 California Code of Regulations), as adopted by the County of Butte; 2) be secure against unauthorized entry; 3) be accessible only through one (1) or more lockable doors; 4) be constructed of approved building materials, including glass, so as long as the marijuana being cultivated cannot be seen from any public right-of-way, including neighboring parcels; 5) contain a ventilation and filtration system that prevents marijuana plant odors from exiting the interior of the structure; 6) be located in the rear yard area of a legal parcel or premises; and 7) maintain the setbacks set forth in section 34C-8.

(c) The installation of electrical fixtures, plumbing, or ventilation/filtration systems, for the purpose of modifying an existing structure to meet the requirements of an accessory structure, shall require a Building Permit.

34C-5. Complaints.

Any person may make a complaint relating to this Chapter.

34C-6. Residency requirements.

Persons engaging in the cultivation of marijuana shall either own the premises, or have entered into a written lease with the owner of the premises.

34C-7 Environmental requirements.

(a) Any parcel where the cultivation of marijuana takes place shall: (1) have a permitted permanent water well or connection to a municipal water source on the premises; (2) not
engage in unlawful or unpermitted surface drawing of water for such cultivation; and (3) not permit illegal discharges of water from the premises.

(b) The premises where the cultivation of marijuana takes place shall either be hooked up to a municipalities’ sewer system, or have a Butte County inspected and permitted sewage disposal system.

(c) Persons engaging in the cultivation of marijuana shall use, dispose and store chemicals in accordance with all applicable laws.

34C-8. Setbacks; Other Restrictions.

(a) Each accessory structure or outdoor garden area that constitutes the single cultivation area where marijuana is cultivated shall be set back from the boundaries of the premises as follows:

(1) If the premises is less than five (5) acres, and the marijuana cultivation takes place inside an accessory structure, the accessory structure shall be set back at least fifteen (15) feet from all boundaries of the premises, and at least seventy-five (75) feet from any occupied residential structure located on a separate legal parcel, unless the Director of the Department of Development Services or his or her designee reduces or waives one or both of these requirements based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall
be notified in writing of any exercise of such discretion under this section.

(2) If the premises is equal to or greater than five (5) acres but less than ten (10) acres in size, the accessory structure or outdoor garden area constituting the single cultivation area shall be set back at least seventy-five (75) feet from all boundaries of the premises, and at least one hundred and fifty (150) feet from any occupied residential structure located on a separate legal parcel, unless the Director of the Department of Development Services or his or her designee reduces or waives one or both of these requirements based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall be notified in writing of any exercise of such discretion under this section.

(3) If the premises is greater than ten (10) acres in size, the accessory structure or outdoor garden area constituting the single cultivation area shall be set back at least one hundred and fifty (150) feet from all boundaries of the premises, and at least one hundred and fifty (150) feet from any occupied residential structure located on a separate legal parcel, unless the Director of the Department of Development Services or his or her designee reduces or waives one or both of these requirements based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to
such premises shall be notified in writing of any exercise of such discretion under this section.

(4) For cultivation taking place in an accessory structure, such setback distance shall be measured in a straight line from the accessory structure to the boundary line of the premises. For cultivation taking place in an outdoor garden area, the cultivation area shall be measured from the outer edge of the canopy of the marijuana plants, and not from the stalk, to the boundary line of the premises.

(b) Notwithstanding the requirements of subsection 34C-4(a) above, the cultivation of 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) Within six hundred (600) feet from a school bus stop.

(3) In any location where the marijuana plants are visible from the public right of way or publicly traveled privately maintained roads.

(4) In any location in the following zones:

(A) Commercial Zones (GC (General Commercial), NC (Neighborhood Commercial), CC (Community Commercial), REC (Recreation Commercial), SE (Sports and Entertainment), MU (Mixed Use));
(B) Industrial Zones (LI (Limited Industrial), GI (General Industrial), HI (Heavy Industrial)); and

(C) Special Purpose Zones (PB (Public), AIR (Airport), RBP (Research/Business Park), PD (Planned Development)).

(c) The distance between the above-listed uses in Section (b)(1) and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 34C-10, 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 Section (b)(2) shall be measured from the fence required in Section 34C-10 to the nearest exterior wall of the residential structure.

(d) No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this chapter.

34C-9 Permission of Property Owner.

If the person(s) cultivating on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain the written permission (including notarized signatures) of the legal owner(s) consenting to the cultivation of marijuana on the parcel.
34C-10 Fencing.

All marijuana grown outside of any building must be fully enclosed by a solid and opaque fence (of approved materials by the Department of Development Services) at least six (6) feet in height or a height sufficient to conceal the marijuana from view, whichever is higher, provided, however, that such fence shall not be required for marijuana grown on premises of five (5) acres or more when such marijuana is grown out of sight from public view. The Director of the Department of Development Services or his or her designee shall have discretion to determine whether the plants are grown out of sight from public view. Should the marijuana plant(s) grow higher than the fence, either (1) the plants shall be cut so as to not extend higher than such fence or (2) the person growing marijuana plants shall install a fence sufficient to conceal the marijuana plants from public view and comply with all applicable Butte County permit requirements. The fence must be adequately secure to prevent unauthorized entry. Bushes or hedgerows may constitute an adequate fence under this Chapter on parcels five (5) acres and above in size.

34C-11 Public Nuisance; Violations.

A violation of any provision of this Chapter shall be deemed to be a public nuisance and subject to the enforcement process as set forth in sections 34C-12 through 34C-17 of this Chapter.

34C-12 Enforcement.
(a) The County may, in its discretion, abate a violation of this Chapter by the prosecution of a civil action, including an action for injunctive relief, without first going through the administrative procedures set forth herein. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of a violation of this Chapter, or requiring compliance with other terms.

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

34C-13 Abatement procedures.

(a) Whenever a Code Enforcement Officer determines that a public nuisance (as defined in this Chapter) exists, he or she shall post a 72-Hour Notice to Abate on the property where the public nuisance exists, and mail a copy of the same to those persons shown on the latest County tax roll to be the owners of the property. The 72-Hour Notice to Abate shall inform the owner and/or tenants of the basis for the violation, and that an Administrative Penalty of $500 per day will accrue for each day that the violation continues to exist; explain that if the violation is not corrected, the matter will be set for a Nuisance Abatement Hearing, at which time the Administrative Penalty will increase to $1,000 per day; and explain that to prevent the accrual of additional penalties and costs, the owner or tenant must contact
the Code Enforcement Office and arrange a time for a Code Enforcement Officer to inspect the property, and confirm that the violation(s) have been corrected.

(b) If the nuisance continues to exist after the expiration of the seventy-two (72) hour period, a Code Enforcement Officer may set the matter for hearing by issuing a Notice of Nuisance Abatement Hearing. If the matter is set for hearing, the Code Enforcement Officer shall post the property upon which the public nuisance exists and shall mail, with a proof of service, notices to those persons known to be in possession of the property, if any, and to persons shown on the latest County tax roll to be the owners of the property at least ten (10) days prior to the hearing. The Administrative Penalty shall increase to $1,000 per day from the date the Notice of Nuisance Abatement Hearing is posted on the property, and shall continue to accrue at that rate for each day that the violation continues to exist. Both the mailed and posted notice shall be in substantially the following form:

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property described on the latest equalized Butte County tax roll as A.P. No.___________ and having a street address of ___________ is (are) hereby notified to appear before a Hearing Officer of the County of Butte at ____________ on ____________, 20___________,
at the hour of __________ o'clock
__________m., to show cause, if any there
be, why the use of said real property should
not be found to be a public nuisance and abated
pursuant to the Butte County Code Chapter 34C.
The Department of Development Services has
determined that conditions exist on the above
property which constitute a public nuisance
and violate Butte County Code section(s)
________, as follows: __________. After
hearing, if a violation is found to have
existed at the time the Notice of Nuisance
Abatement Hearing was posted on the property,
the Administrative Costs incurred in
prosecuting the violation, including, but not
limited to, the cost of the Hearing Officer,
the cost of prior time and expenses associated
with bringing the matter to hearing,
attorneys' fees, the cost associated with any
appeals from the decision of the Hearing
Officer, the cost of judicially abating the
violation, the cost of labor and material
necessary to physically abate the violation,
the cost of securing expert and other
witnesses, and the accrual of any
Administrative Penalties, may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If a lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that if an initial showing is made by the County, sufficient to persuade the Hearing Officer that a public nuisance existed on your property at the time the Notice of Nuisance Abatement Hearing was posted, you will then have the burden of proving that no public nuisance existed on your property. Therefore, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a
public nuisance as defined in this Chapter. A copy of the Butte County Code Chapter 34C relating to Marijuana Cultivation nuisance abatement hearings is enclosed to assist you in the preparation of your presentation.

If an initial showing sufficient to persuade the Hearing Officer that a public nuisance existed on your property is made by the Code Enforcement Officer, your failure to sustain the burden of showing that no public nuisance existed on the property may result in a decision by the Hearing Officer that a public nuisance did exist, and that the County is entitled to recover its Administrative Costs, and all Administrative Penalties that accrued up to the time that the nuisance was abated.

Further, if the Hearing Officer finds that a public nuisance continues to exist on your property, and you fail to abate the nuisance promptly, the County may abate the nuisance. If the County abates the nuisance, in addition to being able to recover its Administrative Costs and Penalties, you may be responsible for the actual costs of the abatement. In either circumstance, all Administrative and
Abatement Costs may be specially assessed against your parcel by the Auditor-Controller's Office and added to your tax bill as a special assessment, and all Administrative Penalties may be recorded against your property as a judgment lien. Special assessments have the same priority, for collection purposes, as other county taxes and, if not paid, may result in a forced sale of your property. You are also hereby notified that the County will seek recovery of attorneys' fees incurred in any hearing and that attorneys' fees may be recovered by the prevailing party.

Finally, if the Hearing Officer finds that a public nuisance exists on your property, in violation of the Butte County Code Chapter 34C, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the Hearing Officer's order.

IMPORTANT: READ THIS NOTICE CAREFULLY.

IN ADDITION TO ANY ADMINISTRATIVE CIVIL PENALTIES THAT HAVE ALREADY ACCRUED, AN
ADMINISTRATIVE CIVIL PENALTY OF $1,000 PER DAY IS HEREBY IMPOSED FROM THE DATE THIS NOTICE WAS POSTED ON YOUR PROPERTY, AND WILL CONTINUE TO ACCRUE AT THAT RATE UNTIL THE NUISANCE IS ABATED. IN ORDER TO PREVENT THE ACCRUAL OF ONGOING PENALTIES AND COSTS, YOU MUST CONTACT THE CODE ENFORCEMENT OFFICE, AND ARRANGE A TIME FOR A CODE ENFORCEMENT OFFICER TO INSPECT YOUR PROPERTY, AND CONFIRM THAT THE VIOLATION(S) HAVE BEEN CORRECTED.

FAILURE TO APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND TERMINATION OF USES OF OR CONDITIONS ON YOUR PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT SERVICES CONTENDS ARE IN VIOLATION OF THE BUTTE COUNTY CODE.

Dated: __________/__________/__________

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES
By:__________

Enclosure: Butte County Code Chapter 34C

(c) All hearings conducted under this Chapter shall be held before a Hearing Officer designated pursuant to the protocol set forth in that document entitled the "Butte County Administrative
Hearing Officer Program." The Program is based upon an alphabetical rotation through attorneys currently under contract through the Program.

(d) At the time and place set for the hearing, the Hearing Officer shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Board of Supervisors. The Director of Development Services, or his or her designee, shall tape record the hearing, and provide a copy of the recording to the Hearing Officer following the conclusion of the hearing. The Hearing Officer shall preserve the record of the hearing, and all photographs and demonstrative and documentary evidence introduced at the time of the hearing, for a period of three (3) years.

(e) Within five (5) days after the hearing is closed, the Hearing Officer shall render his or her written decision relating to the existence or nonexistence of the alleged public nuisance. If a violation is found to have existed at the time the Notice of Nuisance Abatement Hearing was posted, the decision shall include a statement that the County is entitled to recover its Administrative Costs and Administrative Penalties. If the Hearing Officer determines that the violation continues to exist, the decision shall also order that the owner of the property, or persons known to be in possession of the property, abate the violation within a reasonable time, not to exceed ten (10) days
from the date the decision is placed in the mail. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail, return receipt requested, to the person or persons shown on the last County tax roll to be the owners of the property which is the subject of the hearing and the occupant of such parcel, if any. All other persons noticed pursuant to this section shall be mailed a copy of the decision by first class mail, postage prepaid.

(f) The decision of the Hearing Officer shall be final and conclusive on the date the certified mail set forth in subsection (e) above, is deposited in the mail.

(g)(1) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer finds that a violation exists and the public nuisance is not voluntarily abated within ten (10) days of said decision being placed in the mail by the Hearing Officer, the Director of Development Services or his or her designee may abate the public nuisance by cutting and/or removing all marijuana plants from the property, pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above, and Administrative Penalties. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs for each case.
Upon completion of the abatement of the nuisance, whether by the Director of Development Services or his or her designee, or the owner or tenant, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs, as well as all Administrative Penalties. The bill shall also state that failure to pay the Costs and Penalties within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.

(2) If the County's Costs and Penalties are not paid within fifteen (15) days from service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property, and an itemized account of the County's Abatement Costs, Administrative Costs, and Administrative Penalties. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property
with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

(h) At the time and place fixed in the notice, the Board of Supervisors shall hear and consider the proposed lien and special assessment together with objections and protests thereto. At the conclusion of the hearing, the Board of Supervisors may make such modifications and revisions to the proposed lien and special assessment as it deems just and may order that the proposed lien and special assessment be recorded by the Director of Development Services and specially assessed against the property by the Auditor-Controller's Office. The lien shall have the same force, priority and effect as a judgment lien and the special assessment shall have the same priority as other County taxes.

(i) The notice of lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the Hearing Officer was issued, describe the real property subject to the lien, set forth the amount of the Costs and Penalties incurred to date and, if applicable, the date upon which the abatement was completed. If the abatement has not
yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

It is the intent of the Board of Supervisors that Abatement Costs, Administrative Costs, and Administrative Penalties incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all Abatement Costs, Administrative Costs, and Administrative Penalties have been incurred and the abatement is complete, the Department of Development Services shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

(j) The decision of the Hearing Officer or Board of Supervisors may be recorded by the Director of Development Services. In the event of such recordation, and in the further event that the violation is corrected and all Costs and Penalties are paid, a notice of such correction shall be recorded. The Director of Development Services is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs, Administrative Costs, and Administrative Penalties as defined in...
sections 34C-14 and 34C-16 of this Chapter). In any action to
foreclose on a lien issued pursuant to this Chapter, the County
shall be entitled to an award of attorney’s fees.

34C-14 Abatement costs; Administrative costs.

(a) The term "Abatement Costs" means any costs or expenses
reasonably related to the abatement of conditions which violate
the Butte County Code, and shall include, but not be limited to,
 enforcement, investigation, attorneys' fees, collection and
administrative costs, and the costs associated with the removal or
correction of the violation.

(b) The term "Administrative Costs," shall include the cost
of County staff time reasonably related to enforcement, for items
including, but not limited to, site inspections, travel time,
investigations, telephone contacts and time spent preparing
summaries, reports, notices, correspondence, warrants and hearing
packets. The time expended by Development Services and Auditor-
Controller staff, to calculate the above costs and prepare itemized
invoices, may also be recovered.

(c) In any action, administrative proceeding, or special
proceeding to abate a nuisance, attorneys' fees may be recovered
by the prevailing party. In no action, administrative proceeding,
or special proceeding shall an award of attorneys' fees to a
prevailing party exceed the amount of reasonable attorneys' fees
incurred by the County in the action or proceeding.

34C-15 Non-exclusive remedy.
This Chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

34C-16 Administrative Civil Penalties.

In addition to any other remedies provided by County Code or State Law, there is hereby imposed the following civil penalty for each violation of this Chapter:

(a) Five hundred dollars ($500.00) per day from the day the 72-Hour Notice is posted on the property, and continuing for each day that the violation continues to exist; however, if a Notice of Nuisance Abatement Hearing is issued, the penalty shall increase to one thousand dollars ($1,000.00) per day from the date the Notice of Nuisance Abatement Hearing is posted on the property, and shall continue to accrue at that rate for each day that the violation continues to exist, until the violation is abated by whatever means.

(b) At the Nuisance Abatement Hearing, the Hearing Officer shall determine the total amount of Administrative Penalties that have accrued at the time of the hearing, and that amount shall be reflected in the decision and awarded to the County. If at the time of the hearing the nuisance has yet to be abated, the decision shall state that Administrative Penalties shall continue to accrue at $1,000 per day until the nuisance is abated. The decision of the Hearing Officer shall be final and conclusive on the date the decision is deposited in the mail.
(c) Administrative Penalties shall not be awarded if the property owner establishes all of the following: (i) that, at the time he or she acquired the property, a violation of this code already existed on the property; (ii) the property owner did not have actual or constructive notice of the existence of that violation; and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, to meet the requirements of this code.

(d) In the event a tenant or property owner contacts a Code Enforcement Officer and demonstrates that all violations have been corrected in a timely manner prior to a hearing being conducted pursuant to this Chapter, the Director of Development Services, or his or her designee, has the authority to waive or reduce the amount of penalties owed, and cancel the scheduled hearing, if in his or her opinion such a reduction and hearing cancellation is warranted.

(e) Following the issuance of a Hearing Officer’s decision, the Director of Development Services, or his or her designee, may compromise the amount of any administrative penalty imposed by the Hearing Officer. When determining whether to compromise any penalty amount, the Director, or his or her designee, shall take into consideration the nature, circumstances, and gravity of the violation(s), any prior history of violations, the degree of culpability, the financial burden to the person(s) upon whom the
penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for further legal action, and any other matters justice may require. The compromise shall be subject to any terms and conditions prescribed by the Director, or his or her designee, which may include, without limitation, a condition requiring that the subject legal property and all responsible parties remain free of any additional violations for a specified period of time. Any person accepting a compromise penalty hereunder shall be required to execute a Compromise Agreement in a form approved by County Counsel.

34C-17 Summary Abatement.

Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in sections 34C-11 through 34C-14 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the County to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 34C-13 but the formal notice and hearing procedures set forth in this Chapter shall not apply. No summary abatement shall occur prior to consultation with the Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in this Chapter.
34C-18 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Butte any duty to issue a Notice to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

34C-19 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 Departments, who are involved in the enforcement of this Chapter.

Section 2. (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 result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the
environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Section 3. Severability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors hereby declares that it would have passed each section, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 4. Effective Date and Publication. The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect thirty (30) days after final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the ___ day of ___________ 2017, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:
Bill Connelly, Chair of the
Butte County Board of Supervisors

ATTEST:

Paul Hahn,
Chief Administrative Officer and
Clerk of the Board

By: ________________________________
   Deputy