

AN ORDINANCE OF THE COUNTY OF BUTTE

**ADDING ARTICLE I, ENTITLED "MEDICAL MARIJUANA CULTIVATION," OF
CHAPTER 34A, ENTITLED "MEDICAL MARIJUANA CULTIVATION,"
OF THE BUTTE COUNTY CODE**

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

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

CHAPTER 34A MEDICAL MARIJUANA CULTIVATION REGULATION

34A-1 Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.83 and 11362.768(f), 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 Medical Marijuana Cultivation Ordinance."

34A-2 Findings and Purpose.

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

(b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without

1 fear of criminal prosecution under limited, specified
2 circumstances. The Proposition further provides that "nothing
3 in this section shall be construed to supersede legislation
4 prohibiting persons from engaging in conduct that endangers
5 others, or to condone the diversion of marijuana for non-medical
6 purposes." The ballot arguments supporting Proposition 215
7 expressly acknowledged that "Proposition 215 does not allow
8 unlimited quantities of marijuana to be grown anywhere."

9 (c) In 2004, the Legislature enacted Senate Bill 420 (codified
10 as California Health and Safety Code sections 11362.7 et seq.)
11 to clarify the scope of Proposition 215, and to provide
12 qualifying patients and primary caregivers who collectively or
13 cooperatively cultivate marijuana for medical purposes with a
14 limited defense to certain specified State criminal statutes.

15 (d) Health and Safety Code section 11362.83 expressly allows
16 Cities and Counties to adopt and enforce ordinances that are
17 consistent with Senate Bill 420.

18 (e) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et
19 seq., classifies marijuana as a Schedule I Drug, which is
20 defined as a drug or other substance that has a high potential
21 for abuse, that has no currently accepted medical use in
22 treatment in the United States, and that has not been accepted
23 as safe for use under medical supervision. The Federal
24 Controlled Substances Act makes it unlawful, under federal law,
25 for any person to cultivate, manufacture, distribute or

1 dispense, or possess with intent to manufacture, distribute or
2 dispense, marijuana. The Federal Controlled Substances Act
3 contains no exemption for the cultivation, manufacture,
4 distribution, dispensation, or possession of marijuana for
5 medical purposes.

6 (f) The County's geographic and climatic conditions, which
7 include dense forested areas receiving substantial
8 precipitation, along with the sparse population in many areas of
9 the County, provide conditions that are favorable to outdoor
10 marijuana cultivation. Outdoor marijuana growers can achieve a
11 high per-plant yield because of the County's favorable growing
12 conditions. The federal Drug Enforcement Administration reports
13 that various types of marijuana plants under various planting
14 conditions may yield averages of 236 grams, or about one-half
15 pound, to 846 grams, or nearly two pounds. Based on Butte
16 County Sheriff's seizures, yields in Butte County have tended to
17 be beyond this range with three to four pounds of dried "bud"
18 per plant being common. The "street value" of a single cannabis
19 plant is substantial. Pound prices for domestically produced
20 high-grade cannabis sold illegally within Northern California
21 can range between \$1,500 to \$3,000. A single marijuana plant
22 cultivated within the County can thus easily yield \$4,000 or
23 more in salable marijuana.

24 (g) Proposition 215 and Senate Bill 420 primarily address the
25 criminal law, providing qualifying patients and primary

1 caregivers with limited immunity from state criminal prosecution
2 under certain identified statutes. Neither Proposition 215 nor
3 Senate Bill 420, nor the Attorney General's August 2008
4 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
5 *for Medical Use* adopted pursuant to Senate Bill 420, provides
6 comprehensive civil regulation of premises used for marijuana
7 cultivation. The unregulated cultivation of marijuana in the
8 unincorporated area of Butte County can adversely affect the
9 health, safety, and well-being of the County, its residents and
10 environment. Comprehensive civil regulation of premises used
11 for marijuana cultivation is proper and necessary to avoid the
12 risks of criminal activity, degradation of the natural
13 environment, malodorous smells, and indoor electrical fire
14 hazards that may result from unregulated marijuana cultivation,
15 and that are especially significant if the amount of marijuana
16 cultivated on a single premises is not regulated and substantial
17 amounts of marijuana are thereby allowed to be concentrated in
18 one place.

19 (h) Cultivation of marijuana at locations or premises within
20 one thousand (1,000) feet (or one hundred (100) feet with
21 respect to cultivation of six (6) mature or twelve (12) immature
22 plant(s) or twelve (12) plants total with no more than six (6)
23 mature plants in such combination) of schools, school bus stops,
24 school evacuation sites, churches, parks, child care centers, or
25 youth-oriented facilities creates unique risks that the

1 marijuana plants may be observed by juveniles, and therefore be
2 especially vulnerable to theft or recreational consumption by
3 juveniles. Further, the potential for criminal activities
4 associated with marijuana cultivation in such locations poses
5 heightened risks that juveniles will be involved or endangered
6 therefore, cultivation of any amount of marijuana in such
7 locations or premises is especially hazardous to public safety
8 and welfare, and to the protection of children and the person(s)
9 cultivating the marijuana plants.

10 (i) As recognized by the Attorney General's August 2008
11 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
12 *for Medical Use*, the cultivation or other concentration of
13 marijuana in any location or premises without adequate security
14 increases the risk that surrounding homes or businesses may be
15 negatively impacted by nuisance activity such as loitering or
16 crime.

17 (j) It is the purpose and intent of this Chapter to implement
18 State law by providing a means for regulating the cultivation of
19 medical marijuana in a manner that is consistent with State law
20 and which balances the needs of medical patients and their
21 caregivers and promotes the health, safety, and welfare of the
22 residents and businesses within the unincorporated territory of
23 the County of Butte. This Chapter is intended to be consistent
24 with Proposition 215 and Senate Bill 420, and towards that end,
25 is not intended to prohibit persons from individually,

1 collectively, or cooperatively exercising any right otherwise
2 granted by State law. Rather, the intent and purpose of this
3 Chapter is to establish reasonable regulations upon the manner
4 in which marijuana may be cultivated, including restrictions on
5 the amount of marijuana that may be individually, collectively,
6 or cooperatively cultivated in any location or premises, in
7 order to protect the public health, safety, welfare and
8 environment in Butte County.

9 (k) The limited right of qualified patients and their primary
10 caregivers under State law to cultivate marijuana plants for
11 medical purposes does not confer the right to create or maintain
12 a public nuisance. By adopting the regulations contained in
13 this Chapter, the County will achieve a significant reduction in
14 the aforementioned harms caused or threatened by the unregulated
15 cultivation of marijuana in the unincorporated area of Butte
16 County.

17 (l) Nothing in this Chapter shall be construed to allow the use
18 of marijuana for non-medical purposes, or allow any activity
19 relating to the cultivation, distribution, or consumption of
20 marijuana that is otherwise illegal under State or federal law.
21 No provision of this Chapter shall be deemed a defense or
22 immunity to any action brought against any person by the Butte
23 County District Attorney, the Attorney General of State of
24 California, or the United States of America.

1 **34A-3 Definitions.**

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

4 (a) "Child Care Center" means any licensed child care center,
5 daycare center, or childcare home, or any preschool.

6 (b) "Church" means a structure or leased portion of a structure,
7 which is used primarily for religious worship and related
8 religious activities.

9 (c) "Code Enforcement Officer" means any person employed by the
10 County of Butte and appointed to the position of code
11 enforcement officer, as established by Butte County Ordinance
12 Number 2652.

13 (d) "Cultivation" means the planting, growing, harvesting,
14 drying, processing, or storage of one or more marijuana plants
15 or any part thereof in any location, indoor or outdoor,
16 including from within a fully enclosed and secure building.

17 (e) "Enforcing Officer" means the Code Enforcement Officer or
18 the Sheriff, or the authorized deputies or designees of either,
19 each of whom is independently authorized to enforce this
20 Chapter.

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

1
2 (g) "Indoors" means within a fully enclosed and secure structure
3 that complies with the California Building Standards Code (Title
4 24 California Code of Regulations), as adopted by the County of
5 Butte, that has a complete roof enclosure supported by
6 connecting walls extending from the ground to the roof, and a
7 foundation, slab, or equivalent base to which the floor is
8 securely attached. The structure must be secure against
9 unauthorized entry, accessible only through one or more lockable
10 doors, and constructed of solid materials that cannot easily be
11 broken through, such as 2" x 4" or thicker studs overlain with
12 3/8" or thicker plywood or equivalent materials. Plastic
13 sheeting, regardless of gauge, or similar products do not
14 satisfy this requirement.

15 (h) "Legal parcel" means any parcel of real property that may be
16 separately sold in compliance with the Subdivision Map Act
17 (Division 2 (commencing with Section 66410) of Title 7 of the
18 Government Code).

19 (i) "Marijuana plant" means any mature or immature marijuana
20 plant, or any marijuana seedling, unless otherwise specifically
21 provided herein. A "mature" marijuana plant is one whose sex
22 can be determined by visual inspection.

23 (j) "Medical marijuana collective" means qualified patients,
24 persons with valid identification cards, and the designated
25 primary caregivers of qualified patients who associate by

1 written agreement, or form a cooperative in accordance with
2 Section 12300 of the Corporations Code within the unincorporated
3 area of the County in order to collectively or cooperatively
4 cultivate marijuana for medical purposes, as provided in Health
5 and Safety Code Section 11362.775. The term collective shall
6 include "cooperative" unless the context clearly indicates
7 otherwise.

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

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

11 (m) "Premises" means a single, legal parcel of property. Where
12 contiguous legal parcels are under common ownership or control,
13 such contiguous legal parcels shall be counted as a single
14 "premises" for purposes of this Chapter.

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

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

19 (p) "Residential treatment facility" means a facility providing
20 for treatment of drug and alcohol dependency, including any
21 "sober living facility" run by treatment providers for the
22 benefit of transitional living.

23 (q) "School" means an institution of learning for minors,
24 whether public or private, offering a regular course of
25 instruction required by the California Education Code, or any

1 child or day care facility. This definition includes a nursery
2 school, kindergarten, elementary school, middle or junior high
3 school, senior high school, or any special institution of
4 education, but it does not include a vocational or professional
5 institution of higher education, including a community or junior
6 college, college or university.

7 (r) "School Bus Stop" means any location designated in
8 accordance with California Code of Regulations, Title 13,
9 section 1238, to receive school buses, as defined in California
10 Vehicle Code section 233, or school pupil activity buses, as
11 defined in Vehicle Code section 546.

12 (s) "School Evacuation Site" means any location designated by
13 formal action of the governing body, Superintendent, or
14 principal of any school as a location to which juveniles are to
15 be evacuated to, or are to assemble at, in the event of an
16 emergency or other incident at the school.

17 (t) "Sheriff" or "Sheriff's Office" means the Butte County
18 Sheriff's Office or the authorized representatives thereof.

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

1 **34A-4 Nuisance Declared; Cultivation Restrictions.**

2 (a) The cultivation of more than the following total number of
3 marijuana plants, either indoors, outdoors, or combined on any
4 premises is hereby declared to be unlawful and a public nuisance
5 that may be abated in accordance with this Chapter:

6 (1) If the premises is one and a half (1.5) acres in size or
7 less, no more than six (6) mature marijuana plants or twelve
8 (12) immature plants. If both mature and immature marijuana
9 plants are cultivated on the premises, there shall be no more
10 than six (6) mature marijuana plants and no more than twelve
11 (12) total marijuana plants;

12 (2) If the premises is greater than one and a half (1.5)
13 acres in size but less than twenty (20) acres in size, no more
14 than twelve (12) mature marijuana plants or twenty-four (24)
15 immature marijuana plants shall be cultivated on the premises.
16 If both mature and immature marijuana plants are cultivated on
17 the premises, there shall be no more than twelve (12) mature
18 marijuana plants and no more than twenty-four (24) total
19 marijuana plants.

20 (3) If the premises is greater than twenty (20) acres in
21 size but less than eighty (80) acres in size, no more than
22 twenty four (24) mature marijuana plants or forty eight (48)
23 immature marijuana plants shall be cultivated on the premises.
24 If both mature and immature marijuana plants are cultivated on
25 the premises, there shall be no more than twenty four (24)

1 mature marijuana plants and no more than forty eight (48) total
2 marijuana plants.

3 (4) If the premises is greater than eighty (80) acres in
4 size but less than one hundred and sixty (160) acres in size, no
5 more than thirty six (36) mature marijuana plants or seventy two
6 (72) immature marijuana plants shall be cultivated on the
7 premises. If both mature and immature marijuana plants are
8 cultivated on the premises, there shall be no more than thirty
9 six (36) mature marijuana plants and no more than seventy two
10 (72) total marijuana plants.

11 (5) If the premises is one hundred and sixty (160) acres or
12 greater in size, no more than ninety-nine (99) marijuana plants,
13 whether mature or immature, shall be cultivated on the premises.
14 The limitations of section 34A-4(a) shall be imposed regardless
15 of the number of qualified patients or primary caregivers
16 residing at the premises or participating directly or indirectly
17 in the cultivation. Further, such limitations shall be imposed
18 notwithstanding any assertion that the persons(s) cultivating
19 marijuana are the primary caregiver(s) for qualified patients or
20 that such persons(s) are collectively or cooperatively
21 cultivating marijuana. And further, all person(s) cultivating
22 marijuana on the premises or participating directly or
23 indirectly in the cultivation must be Butte County residents.

1 **34A-5. Registration; Cultivation Requirements.**

2 The cultivation of marijuana, in any amount or quantity, either
3 indoors or outdoors, upon any premises is hereby declared to be
4 unlawful and a public nuisance that may be abated in accordance
5 with this Chapter, unless all of the following conditions are
6 satisfied:

7 (a) The persons owning, leasing, occupying, or having charge or
8 possession of any premises greater than one and a half (1.5)
9 acres in size have registered the premises with the Butte County
10 Department of Development Services on an annual basis and
11 provided all of the following current information and
12 documentation to the office:

13 (1) The name and current address of each person, owning,
14 leasing, occupying, or having charge or possession of the
15 premises;

16 (2) The name and current address of each qualified patient
17 or primary caregiver who participates in the cultivation, either
18 directly or by providing reimbursement for the necessary
19 expenses for the cultivation of that marijuana;

20 (3) a copy of the current valid medical recommendation or
21 State-issued medical marijuana card for each qualified patient
22 identified as required above, and for each qualified patient for
23 whom any person identified as required above is the primary
24 caregiver;

1 (4) the number of marijuana plants cultivated on the
2 premises; and

3 (5) such other information and documentation as the
4 Department of Development Services determines is necessary to
5 ensure compliance with State law and this Chapter.

6 Such registration with the Department of Development Services
7 shall be renewed by the applicant on an annual basis.

8 (b) This information and documentation shall be received in
9 confidence, and shall be used or disclosed only for purposes of
10 administration or enforcement of this Chapter or State law, or
11 as otherwise required by law.

12 (c) Persons cultivating no more than (1) six (6) mature
13 marijuana plants or (2) twelve (12) immature marijuana plants or
14 (3) twelve (12) total mature and immature marijuana plants (with
15 no more than six (6) mature plants in such combination) are not
16 required to meet the requirements of section 34A-5(a),
17 notwithstanding the size of the premises.

18 (d) Fees related to the implementation of the "Butte County
19 Medical Marijuana Cultivation Ordinance" shall be as adopted by
20 Resolution of the Board of Supervisors as part of the Butte
21 County Master Fee Schedule.

22 **34A-6. Setbacks.**

23 (a) Each building or outdoor area in which the marijuana is
24 cultivated shall be set back from the boundaries of the premises
25 as follows:

1 (1) If the premises is one and a half (1.5) acres in size
2 or less, each cultivation building or area shall be set back at
3 least fifteen (15) feet from all boundaries of the premises.
4 Such cultivation area shall be measured from the outer edge of
5 the marijuana plant and not the stalk.

6 (2) If the premises is greater than one and a half (1.5)
7 acres in size but less than twenty (20) acres in size, each
8 cultivation building or area shall be set back at least one
9 hundred (100) feet from all boundaries of the premises, unless
10 the Director of the Department of Development Services or his or
11 her designee or the Board of Supervisors reduces or waives this
12 requirement based upon an irregular lot shape making it
13 difficult to comply with such setback requirements.

14 (3) If the premises is greater than twenty (20) acres in
15 size but less than eighty (80) acres in size, each cultivation
16 building or area shall be set back at least two hundred fifty
17 (250) feet from all boundaries of the premises, unless the
18 Director of the Department of Development Services or his or her
19 designee or the Board of Supervisors reduces or waives this
20 requirement based upon an irregular lot shape making it
21 difficult to comply with such setback requirements.

22 (4) If the premises is greater than eighty (80) acres in
23 size but less than one hundred and sixty (160) acres in size,
24 each cultivation building or area shall be set back at least
25 five hundred (500) feet from all boundaries of the premises,

1 unless the Director of the Department of Development Services or
2 his or her designee or the Board of Supervisors reduces or
3 waives this requirement based upon an irregular lot shape making
4 it difficult to comply with such setback requirements.

5 (5) If the premises is one hundred and sixty (160) acres
6 or greater in size, each cultivation building or area shall be
7 set back at least seven hundred (700) feet from all boundaries
8 of the premises, unless the Director of the Department of
9 Development Services or his or her designee or the Board of
10 Supervisors reduces or waives this requirement based upon an
11 irregular lot shape making it difficult to comply with such
12 setback requirements.

13 (6) With respect to subsections 34A-6(a)(2-4), such
14 setback distance shall be measured in a straight line from the
15 building in which the marijuana is cultivated or if the
16 marijuana is cultivated in an outdoor area, from the fence
17 required by section 34A-8, to the boundary line of the premises.

18 (b) Notwithstanding the requirements of subsection 34A-6(a)
19 above, the cultivation of marijuana, whether grown collectively
20 or individually, in any amount or quantity, shall not be allowed
21 in the following areas:

22 (1) Within one thousand (1,000) feet of a youth-oriented
23 facility, a school, a park, or any church or residential
24 treatment facility as defined herein; provided, however, that
25 the cultivation of marijuana on premises of one (1) acre in size

1 or less, whether grown collectively or individually, in any
2 amount or quantity, shall not be allowed within one hundred
3 (100) feet of a youth-oriented facility, a school, a park, or
4 any church or residential treatment facility as defined herein.

5 (2) Outdoors within one hundred (100) feet of any occupied
6 residential structure located on a separate legal parcel,
7 provided, however, that any person cultivating no more than 6
8 mature or 12 immature marijuana plants (or 12 marijuana plants
9 total with no more than six (6) mature plants in such
10 combination) shall not grow outdoors within thirty (30) feet of
11 any occupied residential structure located on a separate legal
12 parcel.

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

15 (c) The distance between the above-listed uses in Section
16 (b)(1) and marijuana that is being cultivated shall be measured
17 in a straight line from the nearest point of the fence required
18 in section 34A-8, or if the marijuana is cultivated indoors,
19 from the nearest exterior wall of the building in which the
20 marijuana is cultivated to the nearest boundary line of the
21 property on which the facility, building, or structure, or
22 portion of the facility, building, or structure in which the
23 above-listed use occurs is located. The distance in Section
24 (b)(2) shall be measured from the fence required in Section 34A-
25 8 to the nearest exterior wall of the residential structure.

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

6 **34A-7 Permission of Property Owner.**

7 If the person(s) cultivating marijuana on any legal parcel
8 is/are not the legal owner(s) of the parcel, such person(s)
9 shall submit a notarized letter from the legal owner(s)
10 consenting to the cultivation of marijuana on the parcel. This
11 letter shall be examined by the Department of Development
12 Services and shall then be returned to the submitter. The
13 Department of Development Services shall prescribe forms for
14 such letters.

15 **34A-8 Fencing.**

16 All marijuana grown outside of any building must be fully
17 enclosed by a solid and opaque fence (of approved materials by
18 the Department of Development Services) at least six (6) feet in
19 height or a height sufficient to conceal the marijuana from
20 view, whichever is higher. Should the marijuana plant(s) grow
21 higher than the fence, either (1) the plants shall be cut so as
22 to not extend higher than such fence or (2) the person growing
23 marijuana plants shall install a fence sufficient to conceal the
24 marijuana plants from public view and comply with all applicable
25 Butte County permit requirements. The fence must be adequately

1 secure to prevent unauthorized entry. Bushes or hedgerows shall
2 not constitute an adequate fence under this Chapter.

3 **34A-9 Notice Regarding Change in Land Use.**

4 The County shall encourage any person proposing to construct or
5 operate a new or relocated school, school bus stop, school
6 evacuation site, church, park, child care center, or youth-
7 oriented facility to consider whether the proposed location of
8 such use is within the required setback near a registered
9 premises upon which marijuana is cultivated. Notwithstanding
10 the requirements of section 34A-5, upon request, the Butte
11 County Department of Development Services shall inform any
12 person proposing to construct or operate a new or relocated
13 school, school bus stop, school evacuation site, church, park,
14 child care center, or youth-oriented facility regarding whether
15 there is a registered premises upon which marijuana is
16 cultivated within the required setback near the proposed
17 location of such use, and, if so, shall also inform the person,
18 owning, leasing, occupying, or having charge or possession of
19 the registered premises that such a use is being proposed within
20 the required setback.

21 **34A-10 Public Nuisance; Violations.**

22 A violation of any provision of this Chapter shall be deemed to
23 be a public nuisance and subject to the enforcement process as
24 set forth in sections 34A-11 through 34A-17 of this Chapter.

1 **34A-11 Enforcement.**

2 (a) The County may, in its discretion, abate the violation of
3 this Chapter by the prosecution of a civil action, including an
4 action for injunctive relief without first going through the
5 administrative procedures set forth herein. The remedy of
6 injunctive relief may take the form of a court order,
7 enforceable through civil contempt proceedings, prohibiting the
8 maintenance of the violation of this Chapter or requiring
9 compliance with other terms.

10 (b) The County may also abate the violation of this Chapter
11 through the abatement process established by Government Code
12 Section 25845 as set forth in Sections 34A-12 through 34A-17
13 beginning with the service of a Notice of Nuisance Abatement
14 Hearing.

15 **34A-12 Abatement procedures.**

16 (a) Whenever the Director of Development Services, or his or her
17 designee determines that a public nuisance (as defined in this
18 Chapter) exists, he or she, or his or her designee, shall
19 request in writing that the public nuisance be abated within
20 seventy-two (72) hours. If the condition(s) continue beyond that
21 seventy-two (72) hour period, the Director of Development
22 Services, or his or her designee, may set the matter for
23 hearing. If the matter is set for hearing, the Director of
24 Development Services or his or her designee, shall post the
25 property upon which the public nuisance exists and shall mail,

1 with a proof of service, notices to those persons known to be in
2 possession of the property, if any, and to persons shown on the
3 latest County tax roll to be the owners of the property at least
4 ten (10) days prior to the hearing, unless thirty (30) days or
5 other notice is required by Health and Safety Code section 17980
6 or other state law. Both the mailed and posted notice shall be
7 in substantially the following form:

8 **NOTICE OF NUISANCE ABATEMENT HEARING**

9
10 The owner(s) and occupant(s) of real property
11 described on the latest equalized Butte County tax
12 roll as A.P. No. _____ and having a street
13 address of _____ is (are) hereby notified to
14 appear before a Hearing Officer of the County of Butte
15 at _____ on _____, 20_____, at
16 the hour of _____ o'clock _____ m., to
17 show cause, if any there be, why the use of said real
18 property should not be found to be a public nuisance
19 and abated pursuant to the Butte County Code Chapter
20 34A. The Department of Development Services has
21 determined that conditions exist on the above property
22 which constitute a public nuisance and violate Butte
23 County Code section(s) _____, as follows:
24 _____ . After hearing, if a violation is found
25 to exist, the cost of abating such violation,

1 including, but not limited to, the cost of the Hearing
2 Officer, the cost of prior time and expenses
3 associated with bringing the matter to hearing,
4 attorneys' fees, the cost associated with any appeals
5 from the decision of the Hearing Officer, the cost of
6 judicially abating the violation, the cost of labor
7 and material necessary to physically abate the
8 violation, and the cost of securing expert and other
9 witnesses may become a lien against the subject
10 property and may also be assessed against the property
11 in the same manner as taxes. If an abatement lien is
12 recorded, it will have the same force and effect as an
13 abstract of judgment which is recorded as a money
14 judgment obtained in a court of law. If you fail to
15 appear at the hearing or if you fail to raise any
16 defense or assert any relevant point at the time of
17 hearing, the County will assert, in later judicial
18 proceedings to enforce an order of abatement, that you
19 have waived all rights to assert such defenses or such
20 points.

21 In preparing for such hearing, you should be aware
22 that if an initial showing is made by the County,
23 sufficient to persuade the Hearing Officer that a
24 public nuisance exists on your property, you will then
25 have the burden of proving that no public nuisance

1 exists on your property. Therefore, you should be
2 prepared to introduce oral and documentary evidence
3 proving why, in your opinion, your use of the property
4 is not a public nuisance as defined in this Chapter. A
5 copy of the Butte County Code Chapter 34A relating to
6 Medical Marijuana Cultivation nuisance abatement
7 hearings is enclosed to assist you in the preparation
8 of your presentation.

9 If an initial showing sufficient to persuade the
10 Hearing Officer that a public nuisance exists on your
11 property is made by the Code Enforcement Officer, your
12 failure to sustain the burden of showing that no
13 public nuisance exists on the property may result in
14 an administrative decision ordering the abatement of
15 uses or conditions on your property which are found to
16 be a public nuisance and may also result in a later
17 judicial order to the same effect.

18 Further, if the Hearing Officer finds that a public
19 nuisance exists on your property and you fail to abate
20 the nuisance promptly, the County may abate the
21 nuisance. If the County abates the nuisance, you may
22 be responsible for the actual costs of the abatement,
23 including the costs to the County of the
24 administrative hearing and attorneys' fees, and such
25 costs may be specially assessed against your parcel by

1 the Auditor-Controller's Office and added to the your
2 tax bill as a special assessment. Such special
3 assessments have the same priority, for collection
4 purposes, as other county taxes and, if not paid, may
5 result in a forced sale of your property. You are also
6 hereby notified that the County will seek recovery of
7 attorneys' fees incurred in any abatement hearing and
8 that attorneys' fees may be recovered by the
9 prevailing party.

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

16 IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO
17 APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS
18 NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR
19 JUDICIAL ABATEMENT AND TERMINATION OF USES OF OR
20 CONDITIONS ON YOUR PROPERTY WHICH THE DIRECTOR OF
21 DEVELOPMENT SERVICES CONTENDS ARE IN VIOLATION OF THE
22 BUTTE COUNTY CODE.

23 Dated: _____ / _____ / _____

24 BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES
25

1 By: _____

2 Enclosure: Butte County Code Chapter 34A

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

9 (c) At the time and place set for the hearing, the Hearing
10 Officer shall review the Director of Development Services'
11 decision ordering cessation of the alleged public nuisance to
12 determine whether such decision conforms to law and is supported
13 by substantial evidence. The Hearing Officer shall hear
14 testimony and receive written and/or documentary evidence
15 relating to the alleged violation. Additional procedural rules
16 may be adopted by resolution of the Board of Supervisors. The
17 Hearing Officer shall tape record the hearing or engage the
18 services of a certified court reporter to record the hearing and
19 shall preserve the record of the hearing and all photographs and
20 demonstrative and documentary evidence introduced at the time of
21 the hearing for a period of three (3) years.

22 (d) Within ten (10) days after the hearing is closed, the
23 Hearing Officer shall render his or her written decision
24 relating to the existence or nonexistence of the alleged public
25

1 nuisance. If a violation is found to exist, the decision shall
2 include a statement of the Abatement and Administrative Costs
3 incurred by the County or estimated costs to abate the violation
4 and shall also order that the owner of the property, or persons
5 known to be in possession of the property, abate the violation
6 within a reasonable time, not to exceed ten (10) days. The
7 decision shall contain findings of fact and conclusions of law.
8 A copy of the decision shall be mailed by certified mail, return
9 receipt requested, to the person or persons shown on the last
10 County tax roll to be the owners of the property which is the
11 subject of the hearing and the occupant of such parcel, if any.
12 All other persons noticed pursuant to this section shall be
13 mailed a copy of the decision by first class mail, postage
14 prepaid.

15 (e) The decision of the Hearing Officer shall be final on the
16 date the certified mail set forth in subsection (d) above, is
17 deposited in the mail. The Hearing Officer shall notify the
18 Clerk of the Board of Supervisors of his or her decision, the
19 date upon which the decision became final and the last date upon
20 which an appeal may be made. If the Board of Supervisors does
21 not receive an appeal within ten (10) days of the date the
22 Hearing Officer's decision becomes final, the Board shall be
23 deemed to have ratified and adopted the Hearing Officer's
24 decision. If it is the decision of the Hearing Officer that a
25 public nuisance exists, the owner of the property shall be

1 responsible for paying all of the County's Abatement Costs and
2 Administrative Costs, including but not limited to, those cost
3 items set forth in the notice required by subsection (a) above.

4 (f) Within the ten (10) day period referred to in subsection (e)
5 above, the owner or occupant of the property, the Director of
6 Development Services, or any other interested person may appeal
7 the decision of the Hearing Officer to the Board of Supervisors
8 of the County of Butte if such individual or entity does all of
9 the following:

10 (1) Delivers a written appeal to the Clerk of the Board of
11 Supervisors within the ten (10) day appeal period; and

12 (2) Delivers to the Clerk of the Board of Supervisors within
13 the ten (10) day appeal period the appeal fee in the sum of
14 Fifty Dollars (\$50.00).

15 (g) Within ten (10) days of being notified by the Clerk of the
16 Board of Supervisors, the appellant shall deposit with the Clerk
17 of the Board an amount of money equal to the estimated cost of
18 transcribing the oral proceedings before the Hearing Officer and
19 the cost of duplicating seven (7) copies of the administrative
20 record, including all exhibits introduced at the hearing. The
21 appellant shall be responsible for the cost of the appeal and
22 record; provided, however, if the Board upholds the appeal and
23 finds that no violation exists then the costs of the appeal
24 shall be borne by the County.

1 (h) In the event of an appeal to the Board of Supervisors, the
2 Board shall decide the appeal based solely on the administrative
3 record and transcript of the hearing. The Board shall review the
4 record, transcript and evidence and then adopt, reject or modify
5 the decision of the Hearing Officer.

6 (i) In the event of an appeal to the Board of Supervisors, the
7 Board shall decide the appeal within thirty (30) days after
8 receipt of the administrative record. Notice of the Board's
9 decision shall be mailed to the property owner, the Director of
10 Development Services, the Hearing Officer and those persons
11 receiving notice pursuant to this section.

12 (j) (1) Notwithstanding any other provisions of this Code, if a
13 final decision of the Hearing Officer or the Board of
14 Supervisors finds that a violation exists and the public
15 nuisance is not voluntarily abated within the time prescribed,
16 the Director of Development Services or his or her designee may
17 abate the public nuisance pursuant to a warrant issued by a
18 court of competent jurisdiction. The owner of the property shall
19 be responsible for paying all of the County's Abatement Costs
20 and Administrative Costs, including but not limited to, those
21 cost items set forth in the notice required by subsection (a)
22 above. The Director of Development Services or his or her
23 designee shall keep an accounting of the Abatement and
24 Administrative Costs to perform each abatement. Upon completion
25 of the abatement, the Director of Development Services or his or

1 her designee shall post the property and send a bill to the
2 owner, and any persons known to be in possession of the
3 property, requesting payment of the County's Abatement and
4 Administrative Costs. The bill shall also state that failure to
5 pay the Abatement and Administrative Costs within fifteen (15)
6 days from service of the bill may result in the recording of a
7 lien and the placement of a special assessment against the
8 property.

9 (2) If the County's Abatement and Administrative Costs are
10 not paid within fifteen (15) days from service of the bill, the
11 Director of Development Services shall render an itemized report
12 to the Clerk of the Board of Supervisors for submittal to the
13 Board of Supervisors for hearing and consideration regarding the
14 proposed lien and special assessment. The report shall include
15 the names and addresses of the owner of record and any persons
16 known to be in possession of the property. The report shall also
17 include the date the abatement was ordered, the work performed,
18 the date the abatement was completed, a description of the
19 property subject to the lien and special assessment, and an
20 itemized account of the County's Abatement and Administrative
21 Costs. At least fifteen (15) days prior to said hearing, the
22 Clerk of the Board of Supervisors shall give notice, with an
23 affidavit of service, of said hearing to all persons named in
24 the Director of Development Services' report and the Director of
25 Development Services or his or her designee shall post the

1 property with a copy of the notice. The notice shall describe
2 the property by assessor's parcel number and street number or
3 other description sufficient to enable identification of the
4 property and contain a statement of the amount of the proposed
5 lien and special assessment. The notice shall also contain a
6 statement that the Board will hear and consider objections and
7 protests to the proposed lien and special assessment at the
8 designated time and place.

9
10 (k) At the time and place fixed in the notice, the Board of
11 Supervisors shall hear and consider the proposed lien and
12 special assessment together with objections and protests
13 thereto. At the conclusion of the hearing, the Board of
14 Supervisors may make such modifications and revisions to the
15 proposed lien and special assessment as it deems just and may
16 order that the proposed lien and special assessment be recorded
17 by the Director of Development Services and specially assessed
18 against the property by the Auditor-Controller's Office. The
19 lien shall have the same force, priority and effect as a
20 judgment lien and the special assessment shall have the same
21 priority as other County taxes.

22 (l) The notice of abatement lien shall, at a minimum, identify
23 the record owner or possessor of the property, set forth the
24 date upon which abatement of the nuisance was ordered or deemed
25 ordered by the Board of Supervisors, describe the real property

1 subject to the lien, set forth the amount of the Abatement Costs
2 and Administrative Costs incurred to date and, if applicable,
3 the date upon which the abatement was completed. If the
4 abatement has not yet been completed, the notice shall so state
5 and shall also indicate that the lien is a partial lien and that
6 additional Abatement Costs will be incurred in the future.

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

19 (m) The decision of the Hearing Officer or Board of Supervisors
20 may be recorded by the Director of Development Services. In the
21 event of such recordation and in the further event that the
22 violation is corrected, a notice of such correction shall be
23 recorded. The Director of Development Services is authorized to
24 prepare and record a notice of correction. Correction of the
25

1 violation shall not excuse the property owner's liability for
2 costs incurred during the administrative abatement process
3 (Abatement Costs and Administrative Costs as defined in section
4 34A-14 of this Chapter). If the property owner has not fully
5 compensated the County for costs incurred during the
6 administrative abatement process, a notice of correction shall
7 not be recorded unless the fee specified in section 41-9 of
8 Chapter 41 has been paid. Payment of the fee specified in
9 section 41-9 of Chapter 41 does not excuse the property owner's
10 liability for costs incurred during the administrative abatement
11 process (Abatement Costs and Administrative Costs as defined in
12 section 34A-14 of this chapter).

13 **34A-13 Alternative hearing procedure.**

14 If all Hearing Officers are unavailable to conduct hearings for
15 any reason, the Board of Supervisors shall conduct nuisance
16 abatement hearings. Should the Board of Supervisors conduct said
17 hearings all notice provisions and hearing procedures set forth
18 herein shall apply. The decision of the Board of Supervisors
19 shall be final.

20 **34A-14 Abatement costs; Administrative costs.**

21 (a) The term "Abatement Costs" means any costs or expenses
22 reasonably related to the abatement of conditions which violate
23 the Butte County Code, and shall include, but not be limited to,
24 enforcement, investigation, attorneys' fees, collection and
25

1 administrative costs, and the costs associated with the removal
2 or correction of the violation.

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

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

18 **34A-15 Non-exclusive remedy.**

19 This Chapter is cumulative to all other remedies now or
20 hereafter available to abate or otherwise regulate or prevent
21 public nuisances.

22 **34A-16 Administrative Civil Penalties.**

23 In addition to any other remedies provided by County Code or
24 State Law, there is hereby imposed the following civil penalty
25

1 for each violation of this Chapter, as imposed by the
2 Enforcement Officer:

3 (a) No less than twenty-five dollars (\$25.00) per day and no
4 more than one hundred dollars (\$100.00) per day for the first
5 violation; no less than one hundred dollars (\$100.00) per day
6 and no more than two hundred dollars (\$200.00) per day for a
7 second violation of this Chapter within one (1) year; and no
8 less than two hundred dollars (\$200.00) per day and no more than
9 five hundred dollars (\$500.00) per day for each additional
10 violation of this Chapter within one (1) year for each day that
11 the violation exists after the date of mailing of the notice of
12 violation through to its abatement by whatever means.

13 (b) The Enforcement Officer shall have the sole and exclusive
14 discretion to set the amount of civil penalties within the
15 ranges set forth in this Section. The Enforcement Officer shall
16 not impose a penalty greater than the minimum amount in range of
17 civil penalties set forth in this Section, unless the
18 Enforcement Officer's department has established a written
19 policy setting forth how civil penalties within the ranges are
20 determined. Such policy shall take into account the facts and
21 circumstances of the violation including, but not limited to,
22 whether or not the violation poses a threat to human health,
23 safety or to the environment; the seriousness or gravity of the
24 violation; the length of time the violation has existed; the
25 culpability of the person in violation or the willfulness of the

1 violation; the sophistication of the persons creating or causing
2 the violation; the extent of the violation and its effect on
3 adjoining properties; attempts, if any, to comply with the
4 applicable ordinances; and any other information which might be
5 relevant to the determination of penalty to be imposed by this
6 Section.

7 (c) If the penalty is imposed for violation of this Chapter
8 there shall be imposed a fine of two hundred fifty dollars
9 (\$250.00), plus the actual costs of abatement.

10 (d) At the discretion of the Enforcement Officer, or his or
11 her designee, or upon the appeal of the property owner, the
12 determination may be referred to a Hearing Officer of the
13 County, duly appointed to hear such matters as described in this
14 Chapter. The determination of the Hearing Officer as to the
15 amount of charges properly imposed under this Section shall be
16 final, subject only to judicial review.

17 (e) The charges imposed by this Section shall not apply if the
18 property owner establishes all of the following: (i) that, at
19 the time he or she acquired the property, a violation of this
20 code already existed on the property; (ii) the property owner
21 did not have actual or constructive notice of the existence of
22 that violation; and (iii) within thirty (30) days after the
23 mailing of notice of the existence of that violation, the
24 property owner initiates and pursues, with due diligence, good
25

1 faith efforts, as determined solely by the Enforcement Officer,
2 to meet the requirements of this code.

3 (f) In the event a property owner, in the opinion of the
4 relevant Department Head(s), abates the nuisance in a timely
5 manner after the Notice and Order to Abate has been issued, the
6 relevant Department Head(s) has (have) the authority to waive or
7 reduce the amount of penalties owed, if in his or her opinion
8 such a reduction is warranted.

9 **34A-17 Summary Abatement.**

10 Notwithstanding any other provision of this Chapter, when any
11 unlawful marijuana cultivation constitutes an immediate threat
12 to the public health or safety, and where the procedures set
13 forth in sections 34A-11 through 34A-15 would not result in
14 abatement of that nuisance within a short enough time period to
15 avoid that threat, the enforcing officer may direct any officer
16 or employee of the County to summarily abate the nuisance. The
17 enforcing officer shall make reasonable efforts to notify the
18 persons identified in Section 34A-12 but the formal notice and
19 hearing procedures set forth in this Chapter shall not apply. No
20 summary abatement shall occur prior to consultation with the
21 Office of County Counsel. The County may nevertheless recover
22 its costs for abating that nuisance in the manner set forth in
23 Sections 34A-12.

1 **34A-18 No Duty to Enforce.**

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

12 **34A-19 Use of Money Collected Under This Chapter.**

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

18
19 Section 2. The County finds that this Chapter is not subject to
20 the California Environmental Quality Act (CEQA) pursuant to
21 Sections 15060(c)(2) (the activity will not result in a direct
22 or reasonably foreseeable indirect physical change in the
23 environment) and 15061(b)(3) (there is no possibility the
24 activity in question may have a significant effect on the
25 environment). In addition to the foregoing general exemptions,

1 the following categorical exemptions apply: Sections 15308
2 (actions taken as authorized by local ordinance to assure
3 protection of the environment) and 15321 (action by agency for
4 enforcement of a law, general rule, standard or objective
5 administered or adopted by the agency, including by direct
6 referral to the County Counsel as appropriate for judicial
7 enforcement).

8
9 Section 3. If any provision of this Chapter or the application
10 thereof to any person or circumstance is held invalid, the
11 remainder of this Chapter, including the application of such
12 party or provision to other circumstances shall not be affected
13 thereby and shall continue in full force and effect. To this
14 end, provisions of this Chapter are severable. The Board of
15 Supervisors hereby declares that it would have passed each
16 section, subsection, subdivision, paragraph, sentence, clause,
17 or phrase hereof irrespective of the fact that any one (1) or
18 more sections, subsections, subdivisions, paragraphs, sentences,
19 clauses or phrases be held unconstitutional, invalid or
20 unenforceable.

21
22 Section 4. The Clerk of the Board will publish the Ordinance
23 codified in this Chapter as required by law. The Ordinance
24 codified in this Chapter shall take effect thirty (30) days
25 after passage."

1 PASSED AND ADOPTED by the Board of Supervisors of the County of
2 Butte, State of California, on the _____ day of _____,
3 2011, by the following vote:

4
5 AYES:

6 NOES:

7 ABSENT:

8 NOT VOTING:

9

10

STEVE LAMBERT, Chair of the
Butte County Board of Supervisors

11

12 ATTEST:

13 Paul Hahn,
14 Chief Administrative Officer and
15 Clerk of the Board

15

16

17 By: _____
Deputy

18

19

20

21

22

23

24

25