

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 of schools, school bus stops, school
21 evacuation sites, churches, parks, child care centers, or youth-
22 oriented facilities creates unique risks that the marijuana
23 plants may be observed by juveniles, and therefore be especially
24 vulnerable to theft or recreational consumption by juveniles.
25 Further, the potential for criminal activities associated with

1 marijuana cultivation in such locations poses heightened risks
2 that juveniles will be involved or endangered, therefore,
3 cultivation of any amount of marijuana in such locations or
4 premises is especially hazardous to public safety and welfare,
5 and to the protection of children and the person(s) cultivating
6 the marijuana plants.

7 (i) Public meetings regarding this ordinance were well-attended
8 by hundreds of Butte County residents. Many residents who live
9 on smaller parcels in more densely populated areas indicated
10 that during the marijuana cultivation season, the overpowering
11 unpleasant smell of marijuana resulted in their inability to use
12 their yards and required them to keep windows and doors shut in
13 the stifling summer heat. Residents stated that they could not
14 invite friends to their home to visit, barbecue outdoors or even
15 allow their children to play in the backyard. Other residents
16 indicated that the use of a swamp cooler during the summer
17 months would actually result in the stench of marijuana being
18 sucked into the residence. Adults and children with respiratory
19 problems were particularly affected. Residents reported that
20 marijuana grown in residential backyards results in an
21 invitation to criminal activity for persons who would steal
22 marijuana plants out of backyards. Some marijuana growers would
23 live in a tent in their backyard, carrying firearms and
24 utilizing guard dogs to protect their marijuana plants.
25 Residents reported they were uncomfortable allowing their

1 children to play outside in their neighborhood due to such
2 dangerous activity. Cultivators of medical marijuana stated
3 that they would not grow medical marijuana at their own
4 residence to protect their children. For this reason, the
5 growth of medical marijuana on smaller parcels is especially
6 dangerous to the community, particularly children. For the
7 public safety and welfare, and to protect children, this
8 ordinance prohibits the cultivation of marijuana on parcels
9 smaller than one half (0.5) of an acre.

10 (j) 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. The Butte County District Attorney's Office has
17 indicated that seven of fifteen homicides in the County last
18 year involved drivers with marijuana in their system and four of
19 the seven victims were killed by alleged marijuana traffickers.
20 The Butte County Sheriff's Office has indicated that over 150
21 calls for service in the past year have involved marijuana,
22 including assaults and an attempted homicide.

23 (k) It is the purpose and intent of this Chapter to implement
24 State law by providing a means for regulating the cultivation of
25 medical marijuana in a manner that is consistent with State law

1 and which balances the needs of medical patients and their
2 caregivers and promotes the health, safety, and welfare of the
3 residents and businesses within the unincorporated territory of
4 the County of Butte. This Chapter is intended to be consistent
5 with Proposition 215 and Senate Bill 420, and towards that end,
6 is not intended to prohibit persons from individually,
7 collectively, or cooperatively exercising any right otherwise
8 granted by State law. Rather, the intent and purpose of this
9 Chapter is to establish reasonable regulations upon the manner
10 in which marijuana may be cultivated, including restrictions on
11 the amount of marijuana that may be individually, collectively,
12 or cooperatively cultivated in any location or premises, in
13 order to protect the public health, safety, welfare and
14 environment in Butte County.

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

23 (m) Nothing in this Chapter shall be construed to allow the use
24 of marijuana for non-medical purposes, or allow any activity
25 relating to the cultivation, distribution, or consumption of

1 marijuana that is otherwise illegal under State or federal law.
2 No provision of this Chapter shall be deemed a defense or
3 immunity to any action brought against any person by the Butte
4 County District Attorney, the Attorney General of State of
5 California, or the United States of America.

6 **34A-3 Definitions.**

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

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

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

14 (c) "Code Enforcement Officer" means any person employed by the
15 County of Butte and appointed to the position of code
16 enforcement officer, as established by Butte County Ordinance
17 Number 2652.

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

22 (e) "Enforcing Officer" means the Code Enforcement Officer or
23 the Sheriff, or the authorized deputies or designees of either,
24 each of whom is independently authorized to enforce this
25 Chapter.

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

6 (g) "Indoors" means within a fully enclosed and secure structure
7 that complies with the California Building Standards Code (Title
8 24 California Code of Regulations), as adopted by the County of
9 Butte, that has a complete roof enclosure supported by
10 connecting walls extending from the ground to the roof, and a
11 foundation, slab, or equivalent base to which the floor is
12 securely attached. The structure must be secure against
13 unauthorized entry, accessible only through one or more lockable
14 doors, and constructed of solid materials that cannot easily be
15 broken through, such as 2" x 4" or thicker studs overlain with
16 3/8" or thicker plywood or equivalent materials. Plastic
17 sheeting, regardless of gauge, or similar products do not
18 satisfy this requirement.

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

23 (i) "Marijuana plant" means any mature or immature marijuana
24 plant, or any marijuana seedling, unless otherwise specifically
25

1 provided herein. A "mature" marijuana plant is one whose sex
2 can be determined by visual inspection.

3 (j) "Medical marijuana collective" means qualified patients,
4 persons with valid identification cards, and the designated
5 primary caregivers of qualified patients who associate by
6 written agreement, or form a cooperative in accordance with
7 Section 12300 of the Corporations Code within the unincorporated
8 area of the County in order to collectively or cooperatively
9 cultivate marijuana for medical purposes, as provided in Health
10 and Safety Code Section 11362.775. The term collective shall
11 include "cooperative" unless the context clearly indicates
12 otherwise.

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

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

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

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

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

24 (p) "Residential treatment facility" means a facility providing
25 for treatment of drug and alcohol dependency, including any

1 "sober living facility" run by treatment providers for the
2 benefit of transitional living.

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

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

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

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

24 (u) "Youth-oriented facility" means elementary school, middle
25 school, high school, public park, and any establishment that

1 advertises in a manner that identifies the establishment as
2 catering to or providing services primarily intended for minors,
3 or the individuals who regularly patronize, congregate or
4 assemble at the establishment are predominantly minors. This
5 shall not include a day care or preschool facility.

6 **34A-4 Nuisance Declared; Cultivation Restrictions.**

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

11 (1) If the premises is one half (0.5) acre in size or less,
12 no plants may be cultivated on the premises;

13 (2) If the premises is greater than one half (0.5) acre in
14 size but less than one and a half (1.5) acres in size, no more
15 than six (6) mature marijuana plants or twelve (12) immature
16 plants. If both mature and immature marijuana plants are
17 cultivated on the premises, there shall be no more than six (6)
18 mature marijuana plants and no more than twelve (12) total
19 marijuana plants;

20 (3) If the premises is greater than one and a half (1.5)
21 acres in size but less than twenty (20) acres in size, no more
22 than twelve (12) mature marijuana plants or twenty-four (24)
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 twelve (12) mature

1 marijuana plants and no more than twenty-four (24) total
2 marijuana plants.

3 (4) If the premises is greater than twenty (20) acres in
4 size but less than eighty (80) acres in size, no more than
5 twenty four (24) mature marijuana plants or forty eight (48)
6 immature marijuana plants shall be cultivated on the premises.
7 If both mature and immature marijuana plants are cultivated on
8 the premises, there shall be no more than twenty four (24)
9 mature marijuana plants and no more than forty eight (48) total
10 marijuana plants.

11 (5) If the premises is greater than eighty (80) acres in
12 size but less than one hundred and sixty (160) acres in size, no
13 more than thirty six (36) mature marijuana plants or seventy two
14 (72) immature marijuana plants shall be cultivated on the
15 premises. If both mature and immature marijuana plants are
16 cultivated on the premises, there shall be no more than thirty
17 six (36) mature marijuana plants and no more than seventy two
18 (72) total marijuana plants.

19 (6) If the premises is one hundred and sixty (160) acres or
20 greater in size, no more than ninety-nine (99) marijuana plants,
21 whether mature or immature, shall be cultivated on the premises.
22 The limitations of section 34A-4(a) shall be imposed regardless
23 of the number of qualified patients or primary caregivers
24 residing at the premises or participating directly or indirectly
25 in the cultivation. Further, such limitations shall be imposed

1 notwithstanding any assertion that the persons(s) cultivating
2 marijuana are the primary caregiver(s) for qualified patients or
3 that such persons(s) are collectively or cooperatively
4 cultivating marijuana. And further, all person(s) cultivating
5 marijuana on the premises or participating directly or
6 indirectly in the cultivation must be Butte County residents.

7 **34A-5. Registration; Cultivation Requirements.**

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

13 (a) The persons owning, leasing, occupying, or having charge or
14 possession of any premises greater than one and a half (1.5)
15 acres in size have registered the premises with the Butte County
16 Department of Development Services on an annual basis and
17 provided all of the following current information and
18 documentation to the office:

19 (1) The name and current address of each person, owning,
20 leasing, occupying, or having charge or possession of the
21 premises;

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

1 (3) a copy of the current valid medical recommendation or
2 State-issued medical marijuana card for each qualified patient
3 identified as required above, and for each qualified patient for
4 whom any person identified as required above is the primary
5 caregiver;

6 (4) the number of marijuana plants cultivated on the
7 premises; and

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

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

13 (b) This information and documentation shall be received in
14 confidence, and shall be used or disclosed only for purposes of
15 administration or enforcement of this Chapter or State law, or
16 as otherwise required by law. The Department of Development
17 Services shall become a designated entity pursuant to the
18 requirements of the Health Insurance Portability and
19 Accountability Act of 1996, otherwise known as HIPAA.

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

1 (d) Fees related to the implementation of the "Butte County
2 Medical Marijuana Cultivation Ordinance" shall be as adopted by
3 Resolution of the Board of Supervisors as part of the Butte
4 County Master Fee Schedule.

5 **34A-6. Setbacks.**

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

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

14 (2) If the premises is greater than one and a half (1.5)
15 acres in size but less than twenty (20) acres in size, each
16 cultivation building or area shall be set back at least one
17 hundred (100) feet from all boundaries of the premises, unless
18 the Director of the Department of Development Services or his or
19 her 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 (3) If the premises is greater than twenty (20) acres in
23 size but less than eighty (80) acres in size, each cultivation
24 building or area shall be set back at least two hundred fifty
25 (250) feet from all boundaries of the premises, unless the

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

5 (4) If the premises is greater than eighty (80) acres in
6 size but less than one hundred and sixty (160) acres in size,
7 each cultivation building or area shall be set back at least
8 five hundred (500) feet from all boundaries of the premises,
9 unless the Director of the Department of Development Services or
10 his or her designee or the Board of Supervisors reduces or
11 waives this requirement based upon an irregular lot shape making
12 it difficult to comply with such setback requirements.

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

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

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

5 (1) Within one thousand (1,000) feet of a youth-oriented
6 facility, a school, a park, or any church or residential
7 treatment facility as defined herein.

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

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

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

1 above-listed use occurs is located. The distance in Section
2 (b)(2) shall be measured from the fence required in Section 34A-
3 8 to the nearest exterior wall of the residential structure.

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

9 **34A-7 Permission of Property Owner.**

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

18 **34A-8 Fencing.**

19 All marijuana grown outside of any building must be fully
20 enclosed by a solid and opaque fence (of approved materials by
21 the Department of Development Services) at least six (6) feet in
22 height or a height sufficient to conceal the marijuana from
23 view, whichever is higher, provided, however, that such fence
24 shall not be required for marijuana grown on premises of twenty
25 (20) acres or more when such marijuana is grown out of sight

1 from public view. The Director of the Department of Development
2 Services or his or her designee shall have discretion to
3 determine whether the plants are grown out of sight from public
4 view. Should the marijuana plant(s) grow higher than the fence,
5 either (1) the plants shall be cut so as to not extend higher
6 than such fence or (2) the person growing marijuana plants shall
7 install a fence sufficient to conceal the marijuana plants from
8 public view and comply with all applicable Butte County permit
9 requirements. The fence must be adequately secure to prevent
10 unauthorized entry. Bushes or hedgerows shall not constitute an
11 adequate fence under this Chapter.

12 **34A-9 Notice Regarding Change in Land Use.**

13 The County shall encourage any person proposing to construct or
14 operate a new or relocated school, school bus stop, school
15 evacuation site, church, park, child care center, or youth-
16 oriented facility to consider whether the proposed location of
17 such use is within the required setback near a registered
18 premises upon which marijuana is cultivated. Notwithstanding
19 the requirements of section 34A-5, upon request, the Butte
20 County Department of Development Services shall inform any
21 person proposing to construct or operate a new or relocated
22 school, school bus stop, school evacuation site, church, park,
23 child care center, or youth-oriented facility regarding whether
24 there is a registered premises upon which marijuana is
25 cultivated within the required setback near the proposed

1 location of such use, and, if so, shall also inform the person,
2 owning, leasing, occupying, or having charge or possession of
3 the registered premises that such a use is being proposed within
4 the required setback.

5 **34A-10 Public Nuisance; Violations.**

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

9 **34A-11 Enforcement.**

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

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

23 **34A-12 Abatement procedures.**

24 (a) Whenever the Director of Development Services, or his or her
25 designee determines that a public nuisance (as defined in this

1 Chapter) exists, he or she, or his or her designee, shall
2 request in writing that the public nuisance be abated within
3 seventy-two (72) hours. If the condition(s) continue beyond that
4 seventy-two (72) hour period, the Director of Development
5 Services, or his or her designee, may set the matter for
6 hearing. If the matter is set for hearing, the Director of
7 Development Services or his or her designee, shall post the
8 property upon which the public nuisance exists and shall mail,
9 with a proof of service, notices to those persons known to be in
10 possession of the property, if any, and to persons shown on the
11 latest County tax roll to be the owners of the property at least
12 ten (10) days prior to the hearing, unless thirty (30) days or
13 other notice is required by Health and Safety Code section 17980
14 or other state law. Both the mailed and posted notice shall be
15 in substantially the following form:

16 **NOTICE OF NUISANCE ABATEMENT HEARING**

17
18 The owner(s) and occupant(s) of real property
19 described on the latest equalized Butte County tax
20 roll as A.P. No. _____ and having a street
21 address of _____ is (are) hereby notified to
22 appear before a Hearing Officer of the County of Butte
23 at _____ on _____, 20_____, at
24 the hour of _____ o'clock _____m., to
25 show cause, if any there be, why the use of said real

1 property should not be found to be a public nuisance
2 and abated pursuant to the Butte County Code Chapter
3 34A. The Department of Development Services has
4 determined that conditions exist on the above property
5 which constitute a public nuisance and violate Butte
6 County Code section(s) _____, as follows:
7 _____ . After hearing, if a violation is found
8 to exist, the cost of abating such violation,
9 including, but not limited to, the cost of the Hearing
10 Officer, the cost of prior time and expenses
11 associated with bringing the matter to hearing,
12 attorneys' fees, the cost associated with any appeals
13 from the decision of the Hearing Officer, the cost of
14 judicially abating the violation, the cost of labor
15 and material necessary to physically abate the
16 violation, and the cost of securing expert and other
17 witnesses may become a lien against the subject
18 property and may also be assessed against the property
19 in the same manner as taxes. If an abatement lien is
20 recorded, it will have the same force and effect as an
21 abstract of judgment which is recorded as a money
22 judgment obtained in a court of law. If you fail to
23 appear at the hearing or if you fail to raise any
24 defense or assert any relevant point at the time of
25 hearing, the County will assert, in later judicial

1 proceedings to enforce an order of abatement, that you
2 have waived all rights to assert such defenses or such
3 points.

4 In preparing for such hearing, you should be aware
5 that if an initial showing is made by the County,
6 sufficient to persuade the Hearing Officer that a
7 public nuisance exists on your property, you will then
8 have the burden of proving that no public nuisance
9 exists on your property. Therefore, you should be
10 prepared to introduce oral and documentary evidence
11 proving why, in your opinion, your use of the property
12 is not a public nuisance as defined in this Chapter. A
13 copy of the Butte County Code Chapter 34A relating to
14 Medical Marijuana Cultivation nuisance abatement
15 hearings is enclosed to assist you in the preparation
16 of your presentation.

17 If an initial showing sufficient to persuade the
18 Hearing Officer that a public nuisance exists on your
19 property is made by the Code Enforcement Officer, your
20 failure to sustain the burden of showing that no
21 public nuisance exists on the property may result in
22 an administrative decision ordering the abatement of
23 uses or conditions on your property which are found to
24 be a public nuisance and may also result in a later
25 judicial order to the same effect.

1 Further, if the Hearing Officer finds that a public
2 nuisance exists on your property and you fail to abate
3 the nuisance promptly, the County may abate the
4 nuisance. If the County abates the nuisance, you may
5 be responsible for the actual costs of the abatement,
6 including the costs to the County of the
7 administrative hearing and attorneys' fees, and such
8 costs may be specially assessed against your parcel by
9 the Auditor-Controller's Office and added to the your
10 tax bill as a special assessment. Such special
11 assessments have the same priority, for collection
12 purposes, as other county taxes and, if not paid, may
13 result in a forced sale of your property. You are also
14 hereby notified that the County will seek recovery of
15 attorneys' fees incurred in any abatement hearing and
16 that attorneys' fees may be recovered by the
17 prevailing party.

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

24 IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO
25 APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS

1 NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR
2 JUDICIAL ABATEMENT AND TERMINATION OF USES OF OR
3 CONDITIONS ON YOUR PROPERTY WHICH THE DIRECTOR OF
4 DEVELOPMENT SERVICES CONTENDS ARE IN VIOLATION OF THE
5 BUTTE COUNTY CODE.

6 Dated: _____/_____/_____

7 BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

8 By: _____

9 Enclosure: Butte County Code Chapter 34A

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

16 (c) At the time and place set for the hearing, the Hearing
17 Officer shall review the Director of Development Services'
18 decision ordering cessation of the alleged public nuisance to
19 determine whether such decision conforms to law and is supported
20 by substantial evidence. The Hearing Officer shall hear
21 testimony and receive written and/or documentary evidence
22 relating to the alleged violation. Additional procedural rules
23 may be adopted by resolution of the Board of Supervisors. The
24 Hearing Officer shall tape record the hearing or engage the
25

1 services of a certified court reporter to record the hearing and
2 shall preserve the record of the hearing and all photographs and
3 demonstrative and documentary evidence introduced at the time of
4 the hearing for a period of three (3) years.

5 (d) Within ten (10) days after the hearing is closed, the
6 Hearing Officer shall render his or her written decision
7 relating to the existence or nonexistence of the alleged public
8 nuisance. If a violation is found to exist, the decision shall
9 include a statement of the Abatement and Administrative Costs
10 incurred by the County or estimated costs to abate the violation
11 and shall also order that the owner of the property, or persons
12 known to be in possession of the property, abate the violation
13 within a reasonable time, not to exceed ten (10) days. The
14 decision shall contain findings of fact and conclusions of law.
15 A copy of the decision shall be mailed by certified mail, return
16 receipt requested, to the person or persons shown on the last
17 County tax roll to be the owners of the property which is the
18 subject of the hearing and the occupant of such parcel, if any.
19 All other persons noticed pursuant to this section shall be
20 mailed a copy of the decision by first class mail, postage
21 prepaid.

22 (e) The decision of the Hearing Officer shall be final on the
23 date the certified mail set forth in subsection (d) above, is
24 deposited in the mail. The Hearing Officer shall notify the
25 Clerk of the Board of Supervisors of his or her decision, the

1 date upon which the decision became final and the last date upon
2 which an appeal may be made. If the Board of Supervisors does
3 not receive an appeal within ten (10) days of the date the
4 Hearing Officer's decision becomes final, the Board shall be
5 deemed to have ratified and adopted the Hearing Officer's
6 decision. If it is the decision of the Hearing Officer that a
7 public nuisance exists, the owner of the property shall be
8 responsible for paying all of the County's Abatement Costs and
9 Administrative Costs, including but not limited to, those cost
10 items set forth in the notice required by subsection (a) above.

11 (f) Within the ten (10) day period referred to in subsection (e)
12 above, the owner or occupant of the property, the Director of
13 Development Services, or any other interested person may appeal
14 the decision of the Hearing Officer to the Board of Supervisors
15 of the County of Butte if such individual or entity does all of
16 the following:

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

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

22 (g) Within ten (10) days of being notified by the Clerk of the
23 Board of Supervisors, the appellant shall deposit with the Clerk
24 of the Board an amount of money equal to the estimated cost of
25

1 transcribing the oral proceedings before the Hearing Officer and
2 the cost of duplicating seven (7) copies of the administrative
3 record, including all exhibits introduced at the hearing. The
4 appellant shall be responsible for the cost of the appeal and
5 record; provided, however, if the Board upholds the appeal and
6 finds that no violation exists then the costs of the appeal
7 shall be borne by the County.

8 (h) In the event of an appeal to the Board of Supervisors, the
9 Board shall decide the appeal based solely on the administrative
10 record and transcript of the hearing. The Board shall review the
11 record, transcript and evidence and then adopt, reject or modify
12 the decision of the Hearing Officer.

13 (i) In the event of an appeal to the Board of Supervisors, the
14 Board shall decide the appeal within thirty (30) days after
15 receipt of the administrative record. Notice of the Board's
16 decision shall be mailed to the property owner, the Director of
17 Development Services, the Hearing Officer and those persons
18 receiving notice pursuant to this section.

19 (j) (1) Notwithstanding any other provisions of this Code, if a
20 final decision of the Hearing Officer or the Board of
21 Supervisors finds that a violation exists and the public
22 nuisance is not voluntarily abated within the time prescribed,
23 the Director of Development Services or his or her designee may
24 abate the public nuisance pursuant to a warrant issued by a
25

1 court of competent jurisdiction. The owner of the property shall
2 be responsible for paying all of the County's Abatement Costs
3 and Administrative Costs, including but not limited to, those
4 cost items set forth in the notice required by subsection (a)
5 above. The Director of Development Services or his or her
6 designee shall keep an accounting of the Abatement and
7 Administrative Costs to perform each abatement. Upon completion
8 of the abatement, the Director of Development Services or his or
9 her designee shall post the property and send a bill to the
10 owner, and any persons known to be in possession of the
11 property, requesting payment of the County's Abatement and
12 Administrative Costs. The bill shall also state that failure to
13 pay the Abatement and Administrative Costs within fifteen (15)
14 days from service of the bill may result in the recording of a
15 lien and the placement of a special assessment against the
16 property.

17 (2) If the County's Abatement and Administrative Costs are
18 not paid within fifteen (15) days from service of the bill, the
19 Director of Development Services shall render an itemized report
20 to the Clerk of the Board of Supervisors for submittal to the
21 Board of Supervisors for hearing and consideration regarding the
22 proposed lien and special assessment. The report shall include
23 the names and addresses of the owner of record and any persons
24 known to be in possession of the property. The report shall also
25 include the date the abatement was ordered, the work performed,

1 the date the abatement was completed, a description of the
2 property subject to the lien and special assessment, and an
3 itemized account of the County's Abatement and Administrative
4 Costs. At least fifteen (15) days prior to said hearing, the
5 Clerk of the Board of Supervisors shall give notice, with an
6 affidavit of service, of said hearing to all persons named in
7 the Director of Development Services' report and the Director of
8 Development Services or his or her designee shall post the
9 property with a copy of the notice. The notice shall describe
10 the property by assessor's parcel number and street number or
11 other description sufficient to enable identification of the
12 property and contain a statement of the amount of the proposed
13 lien and special assessment. The notice shall also contain a
14 statement that the Board will hear and consider objections and
15 protests to the proposed lien and special assessment at the
16 designated time and place.

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

5 (1) The notice of abatement lien shall, at a minimum, identify
6 the record owner or possessor of the property, set forth the
7 date upon which abatement of the nuisance was ordered or deemed
8 ordered by the Board of Supervisors, describe the real property
9 subject to the lien, set forth the amount of the Abatement Costs
10 and Administrative Costs incurred to date and, if applicable,
11 the date upon which the abatement was completed. If the
12 abatement has not yet been completed, the notice shall so state
13 and shall also indicate that the lien is a partial lien and that
14 additional Abatement Costs will be incurred in the future.

15 It is the intent of the Board of Supervisors that Abatement
16 Costs and Administrative Costs incurred after the filing of the
17 notice of abatement lien relate back to the date upon which the
18 lien was recorded for purposes of priority; however, in order to
19 preserve its rights, after all Abatement Costs and
20 Administrative Costs have been incurred and the abatement is
21 complete, the Department of Development Services shall cause a
22 supplemental notice of abatement lien to be recorded. The
23 supplemental notice shall contain all of the information
24 required for the original notice and shall also refer to the
25

1 recordation date and the recorder's document number of the
2 original notice.

3 (m) The decision of the Hearing Officer or Board of Supervisors
4 may be recorded by the Director of Development Services. In the
5 event of such recordation and in the further event that the
6 violation is corrected, a notice of such correction shall be
7 recorded. The Director of Development Services is authorized to
8 prepare and record a notice of correction. Correction of the
9 violation shall not excuse the property owner's liability for
10 costs incurred during the administrative abatement process
11 (Abatement Costs and Administrative Costs as defined in section
12 34A-14 of this Chapter). If the property owner has not fully
13 compensated the County for costs incurred during the
14 administrative abatement process, a notice of correction shall
15 not be recorded unless the fee specified in section 41-9 of
16 Chapter 41 has been paid. Payment of the fee specified in
17 section 41-9 of Chapter 41 does not excuse the property owner's
18 liability for costs incurred during the administrative abatement
19 process (Abatement Costs and Administrative Costs as defined in
20 section 34A-14 of this chapter).

21 **34A-13 Alternative hearing procedure.**

22 If all Hearing Officers are unavailable to conduct hearings for
23 any reason, the Board of Supervisors shall conduct nuisance
24 abatement hearings. Should the Board of Supervisors conduct said
25

1 hearings all notice provisions and hearing procedures set forth
2 herein shall apply. The decision of the Board of Supervisors
3 shall be final.

4 **34A-14 Abatement costs; Administrative costs.**

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

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

19 (c) In any action, administrative proceeding, or special
20 proceeding to abate a nuisance, attorneys' fees may be recovered
21 by the prevailing party. In no action, administrative
22 proceeding, or special proceeding shall an award of attorneys'
23 fees to a prevailing party exceed the amount of reasonable
24
25

1 attorneys' fees incurred by the County in the action or
2 proceeding.

3 **34A-15 Non-exclusive remedy.**

4 This Chapter is cumulative to all other remedies now or
5 hereafter available to abate or otherwise regulate or prevent
6 public nuisances.

7 **34A-16 Administrative Civil Penalties.**

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

12 (a) No less than twenty-five dollars (\$25.00) per day and no
13 more than one hundred dollars (\$100.00) per day for the first
14 violation; no less than one hundred dollars (\$100.00) per day
15 and no more than two hundred dollars (\$200.00) per day for a
16 second violation of this Chapter within one (1) year; and no
17 less than two hundred dollars (\$200.00) per day and no more than
18 five hundred dollars (\$500.00) per day for each additional
19 violation of this Chapter within one (1) year for each day that
20 the violation exists after the date of mailing of the notice of
21 violation through to its abatement by whatever means.

22 (b) The Code Enforcement Officer shall have the sole and
23 exclusive discretion to set the amount of civil penalties within
24 the ranges set forth in this Section. The Code Enforcement
25 Officer shall not impose a penalty greater than the minimum

1 amount in range of civil penalties set forth in this Section,
2 unless the Code Enforcement Officer's department has established
3 a written policy setting forth how civil penalties within the
4 ranges are determined. Such policy shall take into account the
5 facts and circumstances of the violation including, but not
6 limited to, whether or not the violation poses a threat to human
7 health, safety or to the environment; the seriousness or gravity
8 of the violation; the length of time the violation has existed;
9 the culpability of the person in violation or the willfulness of
10 the violation; the sophistication of the persons creating or
11 causing the violation; the extent of the violation and its
12 effect on adjoining properties; attempts, if any, to comply with
13 the applicable ordinances; and any other information which might
14 be relevant to the determination of penalty to be imposed by
15 this Section.

16 (c) If the penalty is imposed for violation of this Chapter
17 there shall be imposed a fine of two hundred fifty dollars
18 (\$250.00), plus the actual costs of abatement.

19 (d) At the discretion of the Code Enforcement Officer, or his
20 or her designee, or upon the appeal of the property owner, the
21 determination may be referred to a Hearing Officer of the
22 County, duly appointed to hear such matters as described in this
23 Chapter. The determination of the Hearing Officer as to the
24 amount of charges properly imposed under this Section shall be
25 final, subject only to judicial review.

1 (e) The charges imposed by this Section shall not apply if the
2 property owner establishes all of the following: (i) that, at
3 the time he or she acquired the property, a violation of this
4 code already existed on the property; (ii) the property owner
5 did not have actual or constructive notice of the existence of
6 that violation; and (iii) within thirty (30) days after the
7 mailing of notice of the existence of that violation, the
8 property owner initiates and pursues, with due diligence, good
9 faith efforts, as determined solely by the Code Enforcement
10 Officer, to meet the requirements of this code.

11 (f) In the event a property owner, in the opinion of the
12 relevant Department Head(s), abates the nuisance in a timely
13 manner after the Notice and Order to Abate has been issued, the
14 relevant Department Head(s) has (have) the authority to waive or
15 reduce the amount of penalties owed, if in his or her opinion
16 such a reduction is warranted.

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

18 Notwithstanding any other provision of this Chapter, when any
19 unlawful marijuana cultivation constitutes an immediate threat
20 to the public health or safety, and where the procedures set
21 forth in sections 34A-11 through 34A-15 would not result in
22 abatement of that nuisance within a short enough time period to
23 avoid that threat, the enforcing officer may direct any officer
24 or employee of the County to summarily abate the nuisance. The
25 enforcing officer shall make reasonable efforts to notify the

1 persons identified in Section 34A-12 but the formal notice and
2 hearing procedures set forth in this Chapter shall not apply. No
3 summary abatement shall occur prior to consultation with the
4 Office of County Counsel. The County may nevertheless recover
5 its costs for abating that nuisance in the manner set forth in
6 Sections 34A-12.

7 **34A-18 No Duty to Enforce.**

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

18 **34A-19 Use of Money Collected Under This Chapter.**

19 All money collected for penalties for violations of this Chapter
20 and all money collected for recovery of costs of enforcement of
21 this Chapter shall be made available to the Department
22 responsible for the enforcement action for training and further
23 code enforcement actions.

1 Section 2. The County finds that this Chapter is not subject to
2 the California Environmental Quality Act (CEQA) pursuant to
3 Sections 15060(c)(2) (the activity will not result in a direct
4 or reasonably foreseeable indirect physical change in the
5 environment) and 15061(b)(3) (there is no possibility the
6 activity in question may have a significant effect on the
7 environment). In addition to the foregoing general exemptions,
8 the following categorical exemptions apply: Sections 15308
9 (actions taken as authorized by local ordinance to assure
10 protection of the environment) and 15321 (action by agency for
11 enforcement of a law, general rule, standard or objective
12 administered or adopted by the agency, including by direct
13 referral to the County Counsel as appropriate for judicial
14 enforcement).

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

1 clauses or phrases be held unconstitutional, invalid or
2 unenforceable.

3
4 Section 4. The Clerk of the Board will publish the Ordinance
5 codified in this Chapter as required by law. The Ordinance
6 codified in this Chapter shall take effect thirty (30) days
7 after passage."

8 PASSED AND ADOPTED by the Board of Supervisors of the County of
9 Butte, State of California, on the 24th day of May, 2011, by the
10 following vote:

11
12 AYES:

13 NOES:

14 ABSENT:

15 NOT VOTING:

16
17
18

STEVE LAMBERT, Chair of the
Butte County Board of Supervisors

19 ATTEST:

20 Paul Hahn,
21 Chief Administrative Officer and
Clerk of the Board

22
23
24 By: _____
Deputy