Ordinance No._____

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

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

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

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

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

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

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

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

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

(h) Cultivation of marijuana at locations or premises within six hundred (600) feet of school bus stops or one thousand (1,000) feet of schools, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential

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for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered, therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

(i) Public meetings regarding previous cultivation ordinances were well-attended by hundreds of Butte County residents. The majority of those present spoke out against the adoption of the proposed ordinance, Ordinance 4029. However, many residents who live on smaller parcels in more densely populated areas indicated that during the marijuana cultivation season, the overpowering unpleasant smell of marijuana resulted in their inability to use their yards and required them to keep windows and doors shut in the stifling summer heat. Residents stated that they could not invite friends to their home to visit, barbecue outdoors or even allow their children to play in the backyard. Other residents indicated that the use of a swamp cooler during the summer months would actually result in the stench of marijuana being sucked into the residence. Adults and children with respiratory problems were particularly affected. Residents reported that marijuana grown in residential backyards results in an invitation to criminal activity for persons who would steal marijuana plants out of backyards. Some marijuana growers would live in a tent in their backyard, carrying

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firearms and utilizing guard dogs to protect their marijuana plants. Residents reported they were uncomfortable allowing their children to play outside in their neighborhood due to such dangerous activity. Cultivators of medical marijuana stated that they would not grow medical marijuana at their own residence to protect their children. For this reason, the growth of medical marijuana on smaller parcels is especially dangerous to the community, particularly children.

(j) As recognized by the Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. The Butte County District Attorney's Office has indicated that there has been an increase in crime/felonies involving marijuana. The Butte County Sheriff's Office has indicated that over 150 calls for service in the past year have involved marijuana, including assaults and an attempted homicide.

(k) It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the

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residents and businesses within the unincorporated territory of the County of Butte. This Chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, welfare and environment in Butte County.

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

(m) The purpose of this Ordinance is to provide a structure for a complaint-driven civil process to remedy nuisances related to medical marijuana cultivation.

(n) The Board of Supervisors adopted Ordinance 4029 on May 24, 2011. A successful referendum campaign was conducted against

Ordinance 4029, which resulted in Ordinance 4029 being placed on the ballot for the regular County election held on June 5, 2012. At the election, Butte County voters failed to approve Ordinance 4029. By adopting this Chapter, the Board of Supervisors intends to reach a compromise between the interests of qualified patients who need access to medical marijuana and those who are adversely affected by its cultivation.

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

34A-3 Definitions.

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

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

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

(c) "Code Enforcement Officer" means any person employed by the County of Butte and appointed to the position of code

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enforcement officer, as established by Butte County Ordinance Number 2652.

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

(e) "Enforcing Officer" means the Code Enforcement Officer or his or her authorized deputies or designees, each of whom is independently authorized to enforce this Chapter.

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

(g) "Harvest" means the drying, processing, or storage of marijuana which may only occur in a fully enclosed and secure building.

(h) "Indoors" means within a fully enclosed and secure detached structure that complies with the California Building Standards Code (Title 24 California Code of Regulations), as adopted by the County of Butte. The detached structure must be secure against unauthorized entry, accessible only through one or more lockable doors and may be constructed of any approved building materials, including glass, as long as the marijuana being cultivated cannot be seen from any public right-of-way. Any

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detached, fully-enclosed and secure structure used for the cultivation of marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure. Such structure shall be located in the rear yard area of a legal parcel or premises, maintain a minimum fifteen (15) foot setback from all property lines and the area surrounding the structure or back yard must be enclosed by a solid fence at least six (6) feet in height. When this Chapter requires that cultivation of marijuana occur indoors, the harvest of such marijuana shall also be accomplished indoors.

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

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

(k) "Medical marijuana collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate

marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

(l) “Outdoors” means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

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

(n) “Premises” means a single, legal parcel of property. Where contiguous legal parcels are under common control or ownership, cultivation will only be permitted on parcels that have a legal residence and have met the requirements of Section 34A-6 and 34A-7.

(o) ”Primary caregiver” means a ”primary caregiver” as defined in Health and Safety Code Section 11362.7(d).

(p) “Qualified patient” means a ”qualified patient” as defined in Health and Safety Code Section 11362.7(f).

(q) ”Residential treatment facility” means a facility providing for treatment of drug and alcohol dependency, including any “sober living facility” run by treatment providers for the benefit of transitional living.

(r) “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of

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education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

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

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

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

34A-4 Nuisance Declared; Cultivation Restrictions.

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

(1) If the premises is four-tenths (0.4) of an acre in size or less, plants may be cultivated on the premises indoors only in a detached structure no larger than one hundred twenty (120) square feet in size;

(2) If the premises is greater than four-tenths (0.4) of an acre in size but less than one and a half (1.5) acres in size, no more than six (6) mature marijuana plants or twelve (12) immature plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than six (6) mature marijuana plants and no more than twelve (12) total marijuana plants. Plants may be cultivated indoors, outdoors or a combination of both;

(3) If the premises is equal to or greater than one and a half (1.5) acres in size but less than three (3) acres in size, no more than eighteen (18) mature marijuana plants or thirty-six (36) immature marijuana plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than eighteen (18) mature marijuana plants and no more than thirty-six (36) total marijuana plants. Plants may be cultivated indoors, outdoors or a combination of both;

(4) If the premises is equal to or greater than three (3) acres in size but less than five (5) acres in size, no more than twenty-four (24) mature marijuana plants or forty-eight (48)

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immature marijuana plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than twenty-four (24) mature marijuana plants and no more than forty-eight (48) total marijuana plants. Plants may be cultivated indoors, outdoors or a combination of both;

(5) If the premises is equal to or greater than five (5) acres in size but less than ten (10) acres in size, no more than forty-eight (48) mature marijuana plants or ninety-six (96) immature marijuana plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than forty-eight (48) mature marijuana plants and no more than ninety-six (96) total marijuana plants. Plants may be cultivated indoors, outdoors or a combination of both;

(6) If the premises is equal to or greater than ten (10) acres in size but less than twenty (20) acres in size, no more than sixty-six (66) mature marijuana plants or ninety-nine (99) immature marijuana plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than sixty-six (66) mature marijuana plants and no more than ninety-nine (99) total marijuana plants. Plants may be cultivated indoors, outdoors or a combination of both;

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(7) If the premises is equal to or greater than twenty (20) acres in size but less than forty (40) acres in size, no more than seventy-two (72) mature marijuana plants or ninety-nine (99) immature marijuana plants shall be cultivated on the premises. If both mature and immature marijuana plants are cultivated on the premises, there shall be no more than seventy-two (72) mature marijuana plants and no more than ninety-nine (99) total marijuana plants. Plants may be cultivated indoors, outdoors, or a combination of both;

(8) If the premises is equal to or greater than forty (40) acres in size, no more than ninety-nine (99) plants, whether mature or immature, may be cultivated on the premises. Plants may be cultivated indoors, outdoors, or a combination of both.

(b) The limitations of section 34A-4(a) shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, such limitations shall be imposed notwithstanding any assertion that the persons(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such persons(s) are collectively or cooperatively cultivating marijuana. And further, all person(s) cultivating marijuana on the premises or participating directly or indirectly in the cultivation must be Butte County residents.

34A-5. Complaints.

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Any person making a complaint relating to this Chapter must (a) provide their name and address and (b) reside within one thousand (1,000) feet of the property that is the subject of the complaint (which shall be established at any hearing authorized by this ordinance and kept confidential by in camera disclosure). Exceptions to the residency requirement in this section will be made for school administrators, church pastors and public park administrators when a complaint relates to a facility under their control.

34A-6. Residency requirements.

(a) Persons engaging in cultivation of medical marijuana shall meet the following requirements:

(1) Such person shall have resided in Butte County for at least one (1) year prior to cultivating medical marijuana in Butte County;

(2) As to the premises relating to the cultivation of medical marijuana, such persons shall either (A) own the premises or (B) have entered into a lease with the actual owner of the premises.

(b) Persons who are members of a medical marijuana collective must be:

(1) a Butte County resident; or

(2) an immediate family member or primary caregiver of a Butte County resident. If a medical marijuana collective member is directly involved in the cultivation of medical marijuana, such

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member must be a resident of Butte County or an immediate family member or primary caregiver of a Butte County resident.

34A-7 Environmental requirements.

(a) All persons engaging in the cultivation of medical marijuana shall (1) have a legal water source on the premises, (2) not engage in unlawful or unpermitted surface drawing of water for such cultivation and (3) not permit illegal discharges of water from the premises.

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

(c) Persons engaging in the cultivation and/or harvest of medical marijuana shall use, dispose and store chemicals used in such cultivation and/or harvest pursuant to applicable laws.

34A-8. Setbacks; Other Restrictions.

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

(1) If the premises is four-tenths (0.4) of an acre in size or less, each detached structure shall be set back at least fifteen (15) feet from all boundaries of the premises.

(2) If the premises is greater than four-tenths (0.4) of an acre in size but less than one and a half (1.5) acres in size, each detached structure or outdoor area shall be set back at

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least fifteen (15) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements. Such cultivation area shall be measured from the outer edge of the marijuana plant and not the stalk.

(3) If the premises is equal to or greater than one and one half (1.5) acres in size but less than three (3) acres in size, each detached structure or outdoor area shall be set back at least twenty (20) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements.

(4) If the premises is equal to or greater than three (3) acres in size but less than five (5) acres in size, each detached structure or outdoor area shall be set back at least twenty-five (25) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements.

(5) If the premises is equal to or greater than five (5) acres in size but less than ten (10) acres in size, each detached

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structure or outdoor area shall be set back at least fifty (50) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements.

(6) If the premises is equal to or greater than ten (10) acres in size but less than twenty (20) acres in size, each detached structure or outdoor area shall be set back at least seventy-five (75) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements.

(7) If the premises is equal to or greater than twenty (20) acres in size but less than forty (40) acres in size, each detached structure or outdoor area shall be set back at least one hundred (100) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee or the Board of Supervisors reduces or waives this requirement based upon an irregular lot shape making it difficult to comply with such setback requirements.

(8) If the premises is equal to or greater than forty (40) acres in size, each detached structure or outdoor area shall be set back at least one hundred (100) feet from all boundaries of

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

(9) With respect to subsections 34A-8(a)(2-8), such setback distance shall be measured in a straight line from the building in which the marijuana is cultivated or if the marijuana is cultivated in an outdoor area, from the fence required by section 34A-10, to the boundary line of the premises.

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

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

(2) Within six hundred (600) feet from a school bus stop.

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

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

(5) In any location in the following zones:

(A) Commercial Zones [C-1 (Light Commercial), C-2 (General Commercial), C-C (Community Commercial), C-F (Commercial Forestry), H-C (Highway Commercial); N-C (Neighborhood Commercial)];

(B) Industrial Zones [L-1 (Limited Industrial) (M-1 (Light Industrial), M-2 (Heavy Industrial)];

(C) Mixed use zones; and

(D) Special purpose zones.

(c) The distance between the above-listed uses in Section (b)(1) and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 34A-10, or if the marijuana is cultivated indoors, from the nearest exterior wall of the building in which the marijuana is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in Section (b)(2) shall be measured from the fence required in Section 34A-10 to the nearest exterior wall of the residential structure.

(d) No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow,

suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this chapter.

34A-9 Permission of Property Owner.

If the person(s) cultivating and/or harvesting marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain the permission of the legal owner(s) consenting to the cultivation and/or harvesting of marijuana on the parcel.

34A-10 Fencing.

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

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requirements. The fence must be adequately secure to prevent unauthorized entry. Bushes or hedgerows may constitute an adequate fence under this Chapter on parcels five (5) acres and above in size.

34A-11 Public Nuisance; Violations.

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

34A-12 Enforcement.

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

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

34A-13 Abatement procedures.

(a) Whenever the Director of Development Services, or his or her designee determines that a public nuisance (as defined in this Chapter) exists, he or she, or his or her designee, shall request in writing that the public nuisance be abated within

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seventy-two (72) hours. If the nuisance continues beyond that seventy-two (72) hour period, the Director of Development Services, or his or her designee, may set the matter for hearing. If the matter is set for hearing, the Director of Development Services or his or her designee, shall post the property upon which the public nuisance exists and shall mail, with a proof of service, notices to those persons known to be in possession of the property, if any, and to persons shown on the latest County tax roll to be the owners of the property at least ten (10) days prior to the hearing, unless thirty (30) days or other notice is required by Health and Safety Code section 17980 or other state law. Both the mailed and posted notice shall be in substantially the following form:

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property described on the latest equalized Butte County tax roll as A.P. No._____ and having a street address of _____ is (are) hereby notified to appear before a Hearing Officer of the County of Butte at _____ on _____, 20_____, at the hour of _____ o'clock _____m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Butte County Code Chapter

34A. The Department of Development Services has determined that conditions exist on the above property which constitute a public nuisance and violate Butte County Code section(s) _____, as follows: _____. After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the Hearing Officer, the cost of prior time and expenses associated with bringing the matter to hearing, attorneys' fees, the cost associated with any appeals from the decision of the Hearing Officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, and the cost of securing expert and other witnesses may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If an abatement lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you

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have waived all rights to assert such defenses or such points.

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

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

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

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

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

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

Dated: _____/_____/_____

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

By:_____

Enclosure: Butte County Code Chapter 34A

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

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

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Hearing Officer shall tape record the hearing or engage the services of a certified court reporter to record the hearing and shall preserve the record of the hearing and all photographs and demonstrative and documentary evidence introduced at the time of the hearing for a period of three (3) years.

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

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

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(f)(1) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer finds that a violation exists and the public nuisance is not voluntarily abated within twenty (20) days of said decision, the Director of Development Services or his or her designee may abate the public nuisance pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs to perform each abatement. Upon completion of the abatement, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs. The bill shall also state that failure to pay the Abatement and Administrative Costs within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.

(2) If the County's Abatement and Administrative Costs are not paid within fifteen (15) days from service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the

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Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property. The report shall also include the date the abatement was ordered, the work performed, the date the abatement was completed, a description of the property subject to the lien and special assessment, and an itemized account of the County's Abatement and Administrative Costs. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

(g) At the time and place fixed in the notice, the Board of Supervisors shall hear and consider the proposed lien and special assessment together with objections and protests thereto. At the conclusion of the hearing, the Board of

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Supervisors may make such modifications and revisions to the proposed lien and special assessment as it deems just and may order that the proposed lien and special assessment be recorded by the Director of Development Services and specially assessed against the property by the Auditor-Controller's Office. The lien shall have the same force, priority and effect as a judgment lien and the special assessment shall have the same priority as other County taxes.

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

It is the intent of the Board of Supervisors that Abatement Costs and Administrative Costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all Abatement Costs and Administrative Costs have been incurred and the abatement is complete, the Department of Development Services shall cause a

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supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

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

34A-14 Abatement costs; Administrative costs.

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

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

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

34A-15 Non-exclusive remedy.

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

34A-16 Administrative Civil Penalties.

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

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

(b) The Code Enforcement Officer shall have the sole and exclusive discretion to set the amount of civil penalties within the ranges set forth in this Section. The Code Enforcement Officer shall not impose a penalty greater than the minimum amount in range of civil penalties set forth in this Section, unless the Code Enforcement Officer's department has established a written policy setting forth how civil penalties within the

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ranges are determined. Such policy shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of penalty to be imposed by this Section.

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

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

(e) The charges imposed by this Section shall not apply if the property owner establishes all of the following: (i) that, at the time he or she acquired the property, a violation of this

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code already existed on the property; (ii) the property owner did not have actual or constructive notice of the existence of that violation; and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the Code Enforcement Officer, to meet the requirements of this code.

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

34A-17 Summary Abatement.

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

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Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in this Chapter.

34A-18 No Duty to Enforce.

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

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

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

Section 2. The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct

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

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

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

PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the __th day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

_____
BILL CONNELLY, Chair of the
Butte County Board of Supervisors

ATTEST:

Paul Hahn,
Chief Administrative Officer and
Clerk of the Board

By: _____
Deputy

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