

1 **CHAPTER 34A OF THE BUTTE COUNTY CODE - BUTTE COUNTY MEDICAL**
2 **MARIJUANA CULTIVATION ORDINANCE**

3
4 **34A-1 Authority and Title.** Pursuant to the authority granted by
5 Article XI, section 7 of the California Constitution, Health and
6 Safety Code sections 11362.83 and 11362.768(f), and Government
7 Code section 25845, the Board of Supervisors does enact this
8 Chapter, which shall be known and may be cited as the "Butte County
9 Medical Marijuana Cultivation Ordinance."

10 **34A-2 Findings and Purpose.**

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

14 (b) The intent of Proposition 215 was to enable persons who
15 are in need of marijuana for medical purposes to use it without
16 fear of criminal prosecution under limited, specified
17 circumstances. The Proposition further provides that "nothing in
18 this section shall be construed to supersede legislation
19 prohibiting persons from engaging in conduct that endangers
20 others, or to condone the diversion of marijuana for non-medical
21 purposes." The ballot arguments supporting Proposition 215
22 expressly acknowledged that "Proposition 215 does not allow
23 unlimited quantities of marijuana to be grown anywhere."

24 (c) In 2004, the Legislature enacted Senate Bill 420
25 (codified as California Health and Safety Code sections 11362.7 et

1 seq.) to clarify the scope of Proposition 215, and to provide
2 qualifying patients and primary caregivers who collectively or
3 cooperatively cultivate marijuana for medical purposes with a
4 limited defense to certain specified State criminal statutes.

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

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

20 (f) The County's geographic and climatic conditions, which
21 include dense forested areas receiving substantial precipitation,
22 along with the sparse population in many areas of the County,
23 provide conditions that are favorable to outdoor marijuana
24 cultivation. Outdoor marijuana growers can achieve a high per-
25 plant yield because of the County's favorable growing conditions.

1 The federal Drug Enforcement Administration reports that various
2 types of marijuana plants under various planting conditions may
3 yield averages of two hundred thirty six (236) grams, or about
4 one-half (.5) pound, to eight hundred forty-six (846) grams, or
5 nearly two (2) pounds. Based on Butte County Sheriff's seizures,
6 yields in Butte County have tended to be beyond this range with
7 three (3) to four (4) pounds of dried "bud" per plant being common.
8 The "street value" of a single cannabis plant is substantial.
9 Pound prices for domestically produced high-grade cannabis sold
10 illegally within Northern California can range between one thousand
11 five hundred dollars (\$1,500.00) to three thousand dollars
12 (\$3,000.00). A single marijuana plant cultivated within the County
13 can thus easily yield four thousand dollars (\$4,000.00) or more in
14 salable marijuana.

15 (g) Proposition 215 and Senate Bill 420 primarily address
16 the criminal law, providing qualifying patients and primary
17 caregivers with limited immunity from state criminal prosecution
18 under certain identified statutes. Neither Proposition 215 nor
19 Senate Bill 420, nor the Attorney General's August 2008 *Guidelines*
20 *for the Security and Non-Diversion of Marijuana Grown for Medical*
21 *Use* adopted pursuant to Senate Bill 420, provides comprehensive
22 civil regulation of premises used for marijuana cultivation. The
23 unregulated cultivation of marijuana in the unincorporated area of
24 Butte County can adversely affect the health, safety, and well-
25 being of the County, its residents and environment. Comprehensive

1 civil regulation of premises used for marijuana cultivation is
2 proper and necessary to avoid the risks of criminal activity,
3 degradation of the natural environment, malodorous smells, and
4 indoor electrical fire hazards that may result from unregulated
5 marijuana cultivation, and that are especially significant if the
6 amount of marijuana cultivated on a single premises is not
7 regulated and substantial amounts of marijuana are thereby allowed
8 to be concentrated in one (1) place.

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

22 (i) Public meetings regarding previous cultivation
23 ordinances were well-attended by hundreds of Butte County
24 residents. The majority of those present spoke out against the
25 adoption of the proposed ordinance, Ordinance 4029. However, many

1 residents who live on smaller parcels in more densely populated
2 areas indicated that during the marijuana cultivation season, the
3 overpowering unpleasant smell of marijuana resulted in their
4 inability to use their yards and required them to keep windows and
5 doors shut in the stifling summer heat. Residents stated that
6 they could not invite friends to their home to visit, barbecue
7 outdoors or even allow their children to play in the backyard.
8 Other residents indicated that the use of a swamp cooler during
9 the summer months would actually result in the stench of marijuana
10 being sucked into the residence. Adults and children with
11 respiratory problems were particularly affected. Residents
12 reported that marijuana grown in residential backyards results in
13 an invitation to criminal activity for persons who would steal
14 marijuana plants out of backyards. Some marijuana growers would
15 live in a tent in their backyard, carrying firearms and utilizing
16 guard dogs to protect their marijuana plants. Residents reported
17 they were uncomfortable allowing their children to play outside in
18 their neighborhood due to such dangerous activity. Cultivators of
19 medical marijuana stated that they would not grow medical marijuana
20 at their own residence to protect their children. For this reason,
21 the growth of medical marijuana on smaller parcels is especially
22 dangerous to the community, particularly children.

23 (j) As recognized by the Attorney General's August 2008
24 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
25 *for Medical Use*, the cultivation or other concentration of

1 marijuana in any location or premises without adequate security
2 increases the risk that surrounding homes or businesses may be
3 negatively impacted by nuisance activity such as loitering or
4 crime. The Butte County District Attorney's Office has indicated
5 that there has been an increase in crime/felonies involving
6 marijuana. The Butte County Sheriff's Office has indicated that
7 over 150 calls for service in the past year have involved
8 marijuana, including assaults and an attempted homicide.

9 (k) It is the purpose and intent of this Chapter to
10 implement State law by providing a means for regulating the
11 cultivation of medical marijuana in a manner that is consistent
12 with State law and which balances the needs of medical patients
13 and their caregivers and promotes the health, safety, and welfare
14 of the residents and businesses within the unincorporated
15 territory of the County of Butte. This Chapter is intended to be
16 consistent with Proposition 215 and Senate Bill 420, and towards
17 that end, is not intended to prohibit persons from individually,
18 collectively, or cooperatively exercising any right otherwise
19 granted by State law. Rather, the intent and purpose of this
20 Chapter is to establish reasonable regulations upon the manner in
21 which marijuana may be cultivated, including restrictions on the
22 amount of marijuana that may be individually, collectively, or
23 cooperatively cultivated in any location or premises, in order to
24 protect the public health, safety, welfare and environment in Butte
25 County.

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

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

12 (n) The Board of Supervisors adopted Ordinance 4029 on May
13 24, 2011. A successful referendum campaign was conducted against
14 Ordinance 4029, which resulted in Ordinance 4029 being placed on
15 the ballot for the regular County election held on June 5, 2012.
16 At the election, Butte County voters failed to approve Ordinance
17 4029. By adopting this Chapter, the Board of Supervisors intends
18 to reach a compromise between the interests of qualified patients
19 who need access to medical marijuana and those who are adversely
20 affected by its cultivation.

21 (o) Nothing in this Chapter shall be construed to allow the
22 use of marijuana for non-medical purposes, or allow any activity
23 relating to the cultivation, distribution, or consumption of
24 marijuana that is otherwise illegal under State or federal law.
25 No provision of this Chapter shall be deemed a defense or immunity

1 to any action brought against any person by the Butte County
2 District Attorney, the Attorney General of State of California, or
3 the United States of America.

4 (p) County staff has reported discovering many marijuana
5 gardens without any person responsible for the property on site.
6 Issues arising from unattended marijuana gardens, such as illegal
7 camping associated with cultivation, abuse of experimental well
8 permits and interim or non-permitted sewage disposal systems have
9 been reported by County staff. Thirteen (13) lawsuits involving
10 illegal grading have been filed by the County and in each case
11 there is no legal residence on the property. The Board has
12 repeatedly made very clear that it is their expectation and
13 requirement that all cultivation activities be conducted with the
14 upmost care, attention, oversight, protection and management
15 possible. Requiring cultivation to take place in conjunction with
16 the patient/caregiver/co-op grower's residence, in all
17 circumstances, is a reasonable means by which to ensure cultivation
18 is being done in line with those expectations and legal
19 requirements throughout the growing season. Requiring cultivation
20 in conjunction with a residence also supports the fundamental
21 principle that cultivation in Butte County is to be done by, and
22 for, Butte County residents, and is not meant for temporary or
23 transient cultivation activities.

24 (q) The original enforcement provisions, which were limited
25 to nuisance abatement and relatively low civil penalties, are not

1 adequate deterrents to violation. After a certain point in the
2 growing season, the current fine amounts are insufficient to
3 properly incentivize compliance. If the ultimate value of non-
4 compliance exceeds the value of compliance, the choice will
5 generally be to continue non-compliance. Higher penalty amounts
6 could result in a reassessment of that choice.

7 (r) The revised provisions contained in this Chapter are
8 intended to address the aforementioned concerns, and more
9 effectively control the harms caused by unregulated and
10 noncompliant marijuana cultivation, while still accommodating the
11 needs of medical patients and their caregivers to the greatest
12 extent practicable.

13 (s) In 2015, the California Legislature enacted Senate Bill
14 643, along with Assembly Bills 243 and 266, which, among other
15 things, established the Medical Marijuana Regulation and Safety
16 Act (codified as California Business and Professions Code sections
17 19300 et seq.). Business and Professions Code section 19315(a)
18 provides that "Nothing in this Chapter shall be interpreted to
19 supersede or limit existing local authority for law enforcement
20 activity, enforcement of local zoning requirements or local
21 ordinances, or enforcement of local permit or licensing
22 requirements.

23 **34A-3 Definitions.**

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

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

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

6 (c) "Code Enforcement Officer" means any person employed by
7 the County of Butte and appointed to the position of code
8 enforcement officer.

9 (d) "Cultivation" means the planting and growing of one (1)
10 or more marijuana plants or any part thereof in any location,
11 indoor or outdoor, including from within a fully enclosed and
12 secure building.

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

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

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

24 (h) "Indoors" means within one (1) fully enclosed and secure
25 detached structure that complies with the California Building

1 Standards Code (Title 24 California Code of Regulations), as
2 adopted by the County of Butte. The detached structure must be
3 secure against unauthorized entry, accessible only through one (1)
4 or more lockable doors and may be constructed of any approved
5 building materials, including glass, as long as the marijuana being
6 cultivated cannot be seen from any public right-of-way. Any
7 detached, fully-enclosed and secure structure used for the
8 cultivation of marijuana must have a ventilation and filtration
9 system installed that shall prevent marijuana plant odors from
10 exiting the interior of the structure. Such structure shall be
11 located in the rear yard area of a legal parcel or premises,
12 maintain the setbacks set forth in section 34A-8 and the area
13 surrounding the structure or back yard must be enclosed by a solid
14 fence at least six (6) feet in height. When this Chapter requires
15 that cultivation of marijuana occur indoors, the harvest of such
16 marijuana shall also be accomplished indoors.

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

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

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

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

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

13 (n) "Premises" means a single, legal parcel of property that
14 includes an occupied legal residence that is a dwelling in
15 compliance with Chapter 26 of the Butte County Code and has also
16 met the requirements of Sections 34A-6 and 34A-7. Where contiguous
17 legal parcels are under common control or ownership, such
18 contiguous legal parcels shall be counted as a single "premises"
19 for purposes of this Chapter.

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

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

24

25

1 (q) "Recommendation" means a written current recommendation
2 signed by a licensed California physician pursuant to Health and
3 Safety Code sections 11362.5 and 11352.7.

4 (r) "Residential treatment facility" means a facility
5 providing for treatment of drug and alcohol dependency, including
6 any "sober living facility" run by treatment providers for the
7 benefit of transitional living.

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

17 (t) "School Bus Stop" means any location designated in
18 accordance with California Code of Regulations, Title 13, section
19 1238, to receive school buses, as defined in California Vehicle
20 Code section 233, or school pupil activity buses, as defined in
21 Vehicle Code section 546.

22 (u) "School Evacuation Site" means any location designated by
23 formal action of the governing body, Superintendent, or principal
24 of any school as a location to which juveniles are to be evacuated
25

1 to, or are to assemble at, in the event of an emergency or other
2 incident at the school.

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

10 **34A-4 Nuisance Declared; Cultivation Restrictions.**

11 (a) The cultivation of marijuana on any parcel that does not
12 satisfy the definition of a premises contained herein is hereby
13 declared to be a public nuisance that may be abated in accordance
14 with this Chapter.

15 (b) The cultivation of marijuana plants exceeding the
16 following square footage limitations, on any premises is hereby
17 declared to be unlawful and a public nuisance that may be abated
18 in accordance with this Chapter:

19 (1) If the premises is one-half (0.5) of an acre in size or
20 less, plants may be cultivated in a single cultivation area no
21 larger than fifty (50) square feet. The cultivation area shall be
22 measured from the outer edge of the marijuana plant canopy and not
23 the stalk. The cultivation area shall have one (1) or more
24 recommendations associated with the plants. The cultivation area
25

1 must be located inside a detached structure that is no larger
2 than one hundred twenty (120) square feet in size;

3 (2) If the premises is greater than one-half (0.5) of an
4 acre in size but less than five (5) acres in size, a single
5 cultivation area no larger than fifty (50) square feet may be
6 devoted to the cultivation of marijuana on the premises. The
7 cultivation area shall be measured from the outer edge of the
8 marijuana plant canopy and not the stalk. The cultivation area
9 shall have one (1) or more recommendations associated with the
10 plants. The cultivation area may be either indoors or outdoors;

11 (3) If the premises is equal to or greater than five (5)
12 acres in size but less than ten (10) acres in size, a single
13 cultivation area no larger than one hundred (100) square feet may
14 be devoted to the cultivation of marijuana on the premises. The
15 cultivation area shall be measured from the outer edge of the
16 marijuana plant canopy and not the stalk. The cultivation area
17 shall have at least one (1) recommendation for every fifty (50)
18 square feet of plants. The cultivation area may be either indoors
19 or outdoors;

20 (4) If the premises is equal to or greater than ten (10)
21 acres in size, a single cultivation area no larger than one hundred
22 fifty (150) square feet may be devoted to the cultivation of
23 marijuana on the premises. The cultivation area shall be measured
24 from the outer edge of the marijuana plant canopy and not the
25 stalk. The cultivation area shall have at least one (1)

1 recommendation for every fifty (50) square feet of plants. The
2 cultivation area may be either indoors or outdoors.

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

13 (d) The single cultivation area shall consist of one
14 contiguous space. The length and width of the single cultivation
15 area shall not exceed a ratio of 2:1.

16 **34A-5. Complaints.**

17 Any person may make a complaint relating to this Chapter.

18 **34A-6. Residency requirements.**

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

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

24 (2) As to the premises relating to the cultivation of medical
25 marijuana, such persons shall either (A) own the premises or (B)

1 have entered into a written lease with the actual owner of the
2 premises.

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

5 (1) a Butte County resident; or

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

11 **34A-7 Environmental requirements.**

12 (a) All persons engaging in the cultivation of medical
13 marijuana shall (1) have a permitted permanent water well or
14 connection to a municipal water source on the premises, (2) not
15 engage in unlawful or unpermitted surface drawing of water for
16 such cultivation and (3) not permit illegal discharges of water
17 from the premises.

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

22 (c) Persons engaging in the cultivation and/or harvest of
23 medical marijuana shall use, dispose and store chemicals used in
24 such cultivation and/or harvest pursuant to applicable laws.
25

1 **34A-8. Setbacks; Other Restrictions.**

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

5 (1) If the premises is one-half (0.5) of an acre in size or
6 less, each detached structure shall be set back at least fifteen
7 (15) feet from all boundaries of the premises, unless the Director
8 of the Department of Development Services or his or her designee
9 reduces or waives this requirement based upon a finding of unusual
10 hardship for that particular parcel to comply with such setback
11 requirements.

12 (2) If the premises is greater than one-half (0.5) of an
13 acre in size but less than five (5) acres in size, each detached
14 structure or outdoor area constituting the single cultivation area
15 shall be set back at least fifty (50) feet from all boundaries of
16 the premises, unless the Director of the Department of Development
17 Services or his or her designee reduces or waives this requirement
18 based upon a finding of unusual hardship for that particular parcel
19 to comply with such setback requirements. Such cultivation area
20 shall be measured from the outer edge of the marijuana plant canopy
21 and not the stalk. Owners of parcels adjacent to such premises
22 shall be notified in writing of any exercise of such discretion
23 under this section.

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

1 structure or outdoor area constituting the single cultivation area
2 shall be set back at least seventy-five (75) feet from all
3 boundaries of the premises, unless the Director of the Department
4 of Development Services or his or her designee reduces or waives
5 this requirement based upon a finding of unusual hardship for that
6 particular parcel to comply with such setback requirements. Owners
7 of parcels adjacent to such premises shall be notified in writing
8 of any exercise of such discretion under this section.

9 (4) If the premises is equal to or greater than ten (10)
10 acres in size, each detached structure or outdoor area shall be
11 set back at least one hundred fifty (150) feet from all boundaries
12 of the premises, unless the Director of the Department of
13 Development Services or his or her designee reduces or waives this
14 requirement based upon a finding of unusual hardship for that
15 particular parcel to comply with such setback requirements. Owners
16 of parcels adjacent to such premises shall be notified in writing
17 of any exercise of such discretion under this section.

18 (5) With respect to subsections 34A-8(a)(2-4), such setback
19 distance shall be measured in a straight line from the building in
20 which the marijuana is cultivated or if the marijuana is cultivated
21 in an outdoor area, from the fence required by section 34A-10, to
22 the boundary line of the premises.

23 (b) Notwithstanding the requirements of subsection 34A-4(a)
24 above, the cultivation of marijuana, whether grown collectively or
25

1 individually, in any amount or quantity, shall not be allowed in
2 the following areas:

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

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

7 (3) Outdoors within one hundred (100) feet of any occupied
8 residential structure located on a separate legal parcel,
9 provided, however, that any person cultivating pursuant to section
10 34A-4(a)(2) shall not grow outdoors within fifty (50) feet of any
11 occupied residential structure located on a separate legal parcel.

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

15 (5) In any location in the following zones:

16 (A) Commercial Zones (GC (General Commercial), NC
17 (Neighborhood Commercial), CC (Community Commercial), REC
18 (Recreation Commercial), SE (Sports and Entertainment), MU (Mixed
19 Use));

20 (B) Industrial Zones (LI (Limited Industrial), GI (General
21 Industrial), HI (Heavy Industrial)); and

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

24 (c) The distance between the above-listed uses in Section
25 (b)(1) and marijuana that is being cultivated shall be measured in

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

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

15 (e) Persons processing marijuana on the premises shall meet
16 the following requirements:

17 (1) All processing of marijuana shall occur Indoors;

18 (2) Persons may only process marijuana that they themselves
19 have cultivated pursuant to this Chapter; and

20 (3) The setback requirements set out in Section 34A-8(a) for
21 cultivation shall also apply to processing of marijuana.

22 **34A-9 Permission of Property Owner.**

23 If the person(s) cultivating and/or harvesting marijuana on any
24 legal parcel is/are not the legal owner(s) of the parcel, such
25 person(s) shall obtain the written permission (including notarized

1 signatures) of the legal owner(s) consenting to the cultivation
2 and/or harvesting of marijuana on the parcel.

3 **34A-10 Fencing.**

4 All marijuana grown outside of any building must be fully enclosed
5 by a solid and opaque fence (of approved materials by the
6 Department of Development Services) at least six (6) feet in height
7 or a height sufficient to conceal the marijuana from view,
8 whichever is higher, provided, however, that such fence shall not
9 be required for marijuana grown on premises of five (5) acres or
10 more when such marijuana is grown out of sight from public view.

11 The Director of the Department of Development Services or his or
12 her designee shall have discretion to determine whether the plants
13 are grown out of sight from public view. Should the marijuana
14 plant(s) grow higher than the fence, either (1) the plants shall
15 be cut so as to not extend higher than such fence or (2) the person
16 growing marijuana plants shall install a fence sufficient to
17 conceal the marijuana plants from public view and comply with all
18 applicable Butte County permit requirements. The fence must be
19 adequately secure to prevent unauthorized entry. Bushes or
20 hedgerows may constitute an adequate fence under this Chapter on
21 parcels five (5) acres and above in size.

22 **34A-11 Public Nuisance; Violations.**

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

1 **34A-12 Enforcement.**

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

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

13 **34A-13 Abatement procedures.**

14 (a) Whenever a Code Enforcement Officer determines that a
15 public nuisance (as defined in this Chapter) exists, he or she
16 shall post a 72-Hour Notice to Abate on the property where the
17 public nuisance exists, and mail a copy of the same to those
18 persons shown on the latest County tax roll to be the owners of
19 the property. The 72-Hour Notice to Abate shall inform the owner
20 and/or tenants of the basis for the violation, and that an
21 Administrative Penalty of \$500 per day will accrue for each day
22 that the violation continues to exist; explain that if the
23 violation is not corrected, the matter will be set for a Nuisance
24 Abatement Hearing, at which time the Administrative Penalty will
25 increase to \$1,000 per day; and explain that to prevent the accrual

1 of additional penalties and costs, the owner or tenant must contact
2 the Code Enforcement Office and arrange a time for a Code
3 Enforcement Officer to inspect the property, and confirm that the
4 violation(s) have been corrected.

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

19 **NOTICE OF NUISANCE ABATEMENT HEARING**

20 The owner(s) and occupant(s) of real property
21 described on the latest equalized Butte
22 County tax roll as A.P. No. _____ and
23 having a street address of _____ is
24 (are) hereby notified to appear before a
25 Hearing Officer of the County of Butte at

1 _____ on _____, 20_____,
2 at the hour of _____ o'clock
3 _____m., to show cause, if any there
4 be, why the use of said real property should
5 not be found to be a public nuisance and abated
6 pursuant to the Butte County Code Chapter 34A.
7 The Department of Development Services has
8 determined that conditions exist on the above
9 property which constitute a public nuisance
10 and violate Butte County Code section(s)
11 _____, as follows: _____. After
12 hearing, if a violation is found to have
13 existed at the time the Notice of Nuisance
14 Abatement Hearing was posted on the property,
15 the Administrative Costs incurred in
16 prosecuting the violation, including, but not
17 limited to, the cost of the Hearing Officer,
18 the cost of prior time and expenses associated
19 with bringing the matter to hearing,
20 attorneys' fees, the cost associated with any
21 appeals from the decision of the Hearing
22 Officer, the cost of judicially abating the
23 violation, the cost of labor and material
24 necessary to physically abate the violation,
25 the cost of securing expert and other

1 witnesses, and the accrual of any
2 Administrative Penalties, may become a lien
3 against the subject property and may also be
4 assessed against the property in the same
5 manner as taxes. If a lien is recorded, it
6 will have the same force and effect as an
7 abstract of judgment which is recorded as a
8 money judgment obtained in a court of law. If
9 you fail to appear at the hearing or if you
10 fail to raise any defense or assert any
11 relevant point at the time of hearing, the
12 County will assert, in later judicial
13 proceedings to enforce an order of abatement,
14 that you have waived all rights to assert such
15 defenses or such points.

16 In preparing for such hearing, you should be
17 aware that if an initial showing is made by
18 the County, sufficient to persuade the Hearing
19 Officer that a public nuisance existed on your
20 property at the time the Notice of Nuisance
21 Abatement Hearing was posted, you will then
22 have the burden of proving that no public
23 nuisance existed on your property. Therefore,
24 you should be prepared to introduce oral and
25 documentary evidence proving why, in your

1 opinion, your use of the property is not a
2 public nuisance as defined in this Chapter. A
3 copy of the Butte County Code Chapter 34A
4 relating to Medical Marijuana Cultivation
5 nuisance abatement hearings is enclosed to
6 assist you in the preparation of your
7 presentation.

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

19 Further, if the Hearing Officer finds that a
20 public nuisance continues to exist on your
21 property, and you fail to abate the nuisance
22 promptly, the County may abate the nuisance.

23 If the County abates the nuisance, in addition
24 to being able to recover its Administrative
25 Costs and Penalties, you may be responsible

1 for the actual costs of the abatement. In
2 either circumstance, all Administrative
3 Costs, Abatement Costs, and Administrative
4 Penalties may be specially assessed against
5 your parcel by the Auditor-Controller's Office
6 and added to the your tax bill as a special
7 assessment. Such special assessments have the
8 same priority, for collection purposes, as
9 other county taxes and, if not paid, may
10 result in a forced sale of your property. You
11 are also hereby notified that the County will
12 seek recovery of attorneys' fees incurred in
13 any hearing and that attorneys' fees may be
14 recovered by the prevailing party.

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

22 IMPORTANT: READ THIS NOTICE CAREFULLY.

23 IN ADDITION TO ANY ADMINISTRATIVE CIVIL
24 PENALTIES THAT HAVE ALREADY ACCRUED, AN
25

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

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

18 Dated: _____/_____/_____

19 BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

20 By: _____

21 Enclosure: Butte County Code Chapter 34A

22
23
24 (c) All hearings conducted under this Chapter shall be held
25 before a Hearing Officer designated pursuant to the protocol set

1 forth in that document entitled the "Butte County Administrative
2 Hearing Officer Program." The Program is based upon an alphabetical
3 rotation through attorneys currently under contract through the
4 Program.

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

16 (e) Within five (5) days after the hearing is closed, the
17 Hearing Officer shall render his or her written decision relating
18 to the existence or nonexistence of the alleged public nuisance.
19 If a violation is found to have existed at the time the Notice of
20 Nuisance Abatement Hearing was posted, the decision shall include
21 a statement that the County is entitled to recover its
22 Administrative Costs and Administrative Penalties. If the Hearing
23 Officer determines that the violation continues to exist, the
24 decision shall also order that the owner of the property, or
25 persons known to be in possession of the property, abate the

1 violation within a reasonable time, not to exceed ten (10) days
2 from the date the decision is placed in the mail. The decision
3 shall contain findings of fact and conclusions of law. A copy of
4 the decision shall be mailed by certified mail, return receipt
5 requested, to the person or persons shown on the last County tax
6 roll to be the owners of the property which is the subject of the
7 hearing and the occupant of such parcel, if any. All other persons
8 noticed pursuant to this section shall be mailed a copy of the
9 decision by first class mail, postage prepaid.

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

13 (g)(1) Notwithstanding any other provisions of this Code, if
14 a final decision of the Hearing Officer finds that a violation
15 exists and the public nuisance is not voluntarily abated within
16 ten (10) days of said decision being placed in the mail by the
17 Hearing Officer, the Director of Development Services or his or
18 her designee may abate the public nuisance by cutting and/or
19 removing all marijuana plants from the property, pursuant to a
20 warrant issued by a court of competent jurisdiction. The owner of
21 the property shall be responsible for paying all of the County's
22 Abatement Costs and Administrative Costs, including but not
23 limited to, those cost items set forth in the notice required by
24 subsection (a) above, and Administrative Penalties. The Director
25 of Development Services or his or her designee shall keep an

1 accounting of the Abatement and Administrative Costs for each case.
2 Upon completion of the abatement of the nuisance, whether by the
3 Director of Development Services or his or her designee, or the
4 owner or tenant, the Director of Development Services or his or
5 her designee shall post the property and send a bill to the owner,
6 and any persons known to be in possession of the property,
7 requesting payment of the County's Abatement and Administrative
8 Costs, as well as all Administrative Penalties. The bill shall
9 also state that failure to pay the Costs and Penalties within
10 fifteen (15) days from service of the bill may result in the
11 recording of a lien and the placement of a special assessment
12 against the property.

13 (2) If the County's Costs and Penalties are not paid within
14 fifteen (15) days from service of the bill, the Director of
15 Development Services shall render an itemized report to the Clerk
16 of the Board of Supervisors for submittal to the Board of
17 Supervisors for hearing and consideration regarding the proposed
18 lien and special assessment. The report shall include the names
19 and addresses of the owner of record and any persons known to be
20 in possession of the property, and an itemized account of the
21 County's Abatement Costs, Administrative Costs, and Administrative
22 Penalties. At least fifteen (15) days prior to said hearing, the
23 Clerk of the Board of Supervisors shall give notice, with an
24 affidavit of service, of said hearing to all persons named in the
25 Director of Development Services' report and the Director of

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

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

21 (i) The notice of lien shall, at a minimum, identify the
22 record owner or possessor of the property, set forth the date upon
23 which the decision of the Hearing Officer was issued, describe the
24 real property subject to the lien, set forth the amount of the
25 Costs and Penalties incurred to date and, if applicable, the date

1 upon which the abatement was completed. If the abatement has not
2 yet been completed, the notice shall so state and shall also
3 indicate that the lien is a partial lien and that additional
4 Abatement Costs will be incurred in the future.

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

17 (j) The decision of the Hearing Officer or Board of
18 Supervisors may be recorded by the Director of Development
19 Services. In the event of such recordation, and in the further
20 event that the violation is corrected and all Costs and Penalties
21 are paid, a notice of such correction shall be recorded. The
22 Director of Development Services is authorized to prepare and
23 record a notice of correction. Correction of the violation shall
24 not excuse the property owner's liability for costs incurred during
25 the administrative abatement process (Abatement Costs,

1 Administrative Costs, and Administrative Penalties as defined in
2 sections 34A-14 and 34A-16 of this Chapter). In any action to
3 foreclose on a lien issued pursuant to this Chapter, the County
4 shall be entitled to an award of attorney's fees.

5 **34A-14 Abatement costs; Administrative costs.**

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

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

20 (c) In any action, administrative proceeding, or special
21 proceeding to abate a nuisance, attorneys' fees may be recovered
22 by the prevailing party. In no action, administrative
23 proceeding, or special proceeding shall an award of attorneys'
24 fees to a prevailing party exceed the amount of reasonable
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 hereafter
5 available to abate or otherwise regulate or prevent public
6 nuisances.

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

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

11 (a) Five hundred dollars (\$500.00) per day from the day the
12 72-Hour Notice is posted on the property, and continuing for each
13 day that the violation continues to exist; however, if a Notice of
14 Nuisance Abatement Hearing is issued, the penalty shall increase
15 to one thousand dollars (\$1,000.00) per day from the date the
16 Notice of Nuisance Abatement Hearing is posted on the property,
17 and shall continue to accrue at that rate for each day that the
18 violation continues to exist, until the violation is abated by
19 whatever means.

20 (b) At the Nuisance Abatement Hearing, the Hearing Officer
21 shall determine the total amount of Administrative Penalties that
22 have accrued at the time of the hearing, and that amount shall be
23 reflected in the decision and awarded to the County. If at the
24 time of the hearing the nuisance has yet to be abated, the decision
25 shall state that Administrative Penalties shall continue to accrue

1 at \$1,000 per day until the nuisance is abated. The decision of
2 the Hearing Officer shall be final and conclusive on the date the
3 decision is deposited in the mail.

4 (c) Administrative Penalties shall not be awarded if the
5 property owner establishes all of the following: (i) that, at the
6 time he or she acquired the property, a violation of this code
7 already existed on the property; (ii) the property owner did not
8 have actual or constructive notice of the existence of that
9 violation; and (iii) within thirty (30) days after the mailing of
10 notice of the existence of that violation, the property owner
11 initiates and pursues, with due diligence, good faith efforts, to
12 meet the requirements of this code.

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

21 (e) Following the issuance of a Hearing Officer's decision,
22 the Director of Development Services, or his or her designee, may
23 compromise the amount of any administrative penalty imposed by the
24 Hearing Officer. When determining whether to compromise any
25 penalty amount, the Director, or his or her designee, shall take

1 into consideration the nature, circumstances, and gravity of the
2 violation(s), any prior history of violations, the degree of
3 culpability, the financial burden to the person(s) upon whom the
4 penalty has been imposed, the degree to which the proposed
5 compromise will facilitate collection of the penalties without the
6 need for further legal action, and any other matters justice may
7 require. The compromise shall be subject to any terms and
8 conditions prescribed by the Director, or his or her designee,
9 which may include, without limitation, a condition requiring that
10 the subject legal property and all responsible parties remain free
11 of any additional violations for a specified period of time. Any
12 person accepting a compromise penalty hereunder shall be required
13 to execute a Compromise Agreement in a form approved by County
14 Counsel.

15 **34A-17 Summary Abatement.**

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

1 summary abatement shall occur prior to consultation with the Office
2 of County Counsel. The County may nevertheless recover its costs
3 for abating that nuisance in the manner set forth in this Chapter.

4 **34A-18 No Duty to Enforce.**

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

15 **34A-19 Use of Money Collected Under This Chapter.**

16 All money collected for penalties for violations of this Chapter
17 and all money collected for recovery of costs of enforcement of
18 this Chapter shall be made available to the Departments, who are
19 involved in the enforcement of this Chapter.

20
21 Ordinance No. 4107

22 PASSED and ADOPTED by the Board of Supervisors of the County of
23 Butte, State of California on the 26th day of January 2016.