

1 **CHAPTER 34A OF THE BUTTE COUNTY CODE - RESTRICTIONS ON**
2 **CULTIVATION OF MEDICAL MARIJAUANA**

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

5 **CHAPTER 34A MEDICAL MARIJUANA CULTIVATION REGULATION**

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

13 **34A-2 Findings and Purpose.**

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

17 (b) The intent of Proposition 215 was to enable persons who are
18 in need of marijuana for medical purposes to use it without fear
19 of criminal prosecution under limited, specified circumstances.
20 The Proposition further provides that "nothing in this section
21 shall be construed to supersede legislation prohibiting persons
22 from engaging in conduct that endangers others, or to condone the
23 diversion of marijuana for non-medical purposes." The ballot
24 arguments supporting Proposition 215 expressly acknowledged that
25

1 "Proposition 215 does not allow unlimited quantities of marijuana
2 to be grown anywhere."

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

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

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

24 (f) The County's geographic and climatic conditions, which
25 include dense forested areas receiving substantial precipitation,

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

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

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

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

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

1 proposed ordinance, Ordinance 4029. However, many residents who
2 live on smaller parcels in more densely populated areas indicated
3 that during the marijuana cultivation season, the overpowering
4 unpleasant smell of marijuana resulted in their inability to use
5 their yards and required them to keep windows and doors shut in
6 the stifling summer heat. Residents stated that they could not
7 invite friends to their home to visit, barbecue outdoors or even
8 allow their children to play in the backyard. Other residents
9 indicated that the use of a swamp cooler during the summer months
10 would actually result in the stench of marijuana being sucked into
11 the residence. Adults and children with respiratory problems were
12 particularly affected. Residents reported that marijuana grown in
13 residential backyards results in an invitation to criminal
14 activity for persons who would steal marijuana plants out of
15 backyards. Some marijuana growers would live in a tent in their
16 backyard, carrying firearms and utilizing guard dogs to protect
17 their marijuana plants. Residents reported they were
18 uncomfortable allowing their children to play outside in their
19 neighborhood due to such dangerous activity. Cultivators of
20 medical marijuana stated that they would not grow medical marijuana
21 at their own residence to protect their children. For this reason,
22 the growth of medical marijuana on smaller parcels is especially
23 dangerous to the community, particularly children.

24 (j) As recognized by the Attorney General's August 2008
25 *Guidelines for the Security and Non-Diversion of Marijuana Grown*

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

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

1 protect the public health, safety, welfare and environment in Butte
2 County.

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

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

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

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

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

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

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

13 **34A-3 Definitions.**

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

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

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

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

24 (d) "Cultivation" means the planting and growing of one or more
25 marijuana plants or any part thereof in any location, indoor or

1 outdoor, including from within a fully enclosed and secure
2 building.

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

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

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

13 (h) "Indoors" means within one (1) fully enclosed and secure
14 detached structure that complies with the California Building
15 Standards Code (Title 24 California Code of Regulations), as
16 adopted by the County of Butte. The detached structure must be
17 secure against unauthorized entry, accessible only through one or
18 more lockable doors and may be constructed of any approved building
19 materials, including glass, as long as the marijuana being
20 cultivated cannot be seen from any public right-of-way. Any
21 detached, fully-enclosed and secure structure used for the
22 cultivation of marijuana must have a ventilation and filtration
23 system installed that shall prevent marijuana plant odors from
24 exiting the interior of the structure. Such structure shall be
25 located in the rear yard area of a legal parcel or premises,

1 maintain the setbacks set forth in section 34A-8 and the area
2 surrounding the structure or back yard must be enclosed by a solid
3 fence at least six (6) feet in height. When this Chapter requires
4 that cultivation of marijuana occur indoors, the harvest of such
5 marijuana shall also be accomplished indoors.

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

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

14 (k) "Medical marijuana collective" means qualified patients,
15 persons with valid identification cards, and the designated
16 primary caregivers of qualified patients who associate by
17 agreement, or form a cooperative in accordance with Section 12300
18 of the Corporations Code within the unincorporated area of the
19 County in order to collectively or cooperatively cultivate
20 marijuana for medical purposes, as provided in Health and Safety
21 Code Section 11362.775. The term collective shall include
22 "cooperative" unless the context clearly indicates otherwise.

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

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

(n) "Premises" means a single, legal parcel of property that includes an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Sections 34A-6 and 34A-7. Where contiguous legal parcels are under common control or ownership, cultivation will only be permitted on parcels that have an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of 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) "Recommendation" means a written current recommendation signed by a licensed California physician pursuant to Health and Safety Code sections 11362.5 and 11352.7.

(r) "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.

(s) "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,

1 senior high school, or any special institution of education, but
2 it does not include a vocational or professional institution of
3 higher education, including a community or junior college, college
4 or university.

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

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

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

22 **34A-4 Nuisance Declared; Cultivation Restrictions.**

23 (a) The cultivation of marijuana plants exceeding the following
24 square footage limitations, on any premises is hereby declared
25

1 to be unlawful and a public nuisance that may be abated in
2 accordance with this Chapter:

3 (1) If the premises is one-half (0.5) of an acre in size or less,
4 plants may be cultivated on the premises indoors only in a detached
5 structure no larger than one hundred twenty (120) square feet in
6 size;

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

15 (3) If the premises is equal to or greater than five (5) acres in
16 size but less than ten (10) acres in size, a single cultivation
17 area no larger than one hundred (100) square feet may be devoted
18 to the cultivation of marijuana on the premises. The cultivation
19 area shall be measured from the outer edge of the marijuana plant
20 canopy and not the stalk. The cultivation area shall have two (2)
21 or more recommendations associated with the plants. The
22 cultivation area may be either indoors or outdoors;

23 (4) If the premises is equal to or greater than ten (10) acres in
24 size, a single cultivation area no larger than one hundred fifty
25 (150) square feet may be devoted to the cultivation of marijuana
on the premises. The cultivation area shall be measured from the

1 outer edge of the marijuana plant canopy and not the stalk. The
2 cultivation area shall have three (3) or more recommendations
3 associated with the plants. The cultivation area may be either
4 indoors or outdoors.

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

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

18 **34A-5. Complaints.**

19 Any person may make a complaint relating to this Chapter.
20

21 **34A-6. Residency requirements.**

22 (a) Persons engaging in cultivation of medical marijuana shall
23 meet the following requirements:
24
25

(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 written 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 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 permitted permanent water well or connection to a municipal water source on the premises, (2) not engage in unlawful or unpermitted surface drawing of water for such cultivation and (3) not permit illegal discharges of water from the premises.

(b) The premises where the cultivation of medical marijuana takes place shall either be hooked up to a municipalities' sewer system

1 or have a Butte County inspected and permitted sewage disposal
2 system.

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

6
7 **34A-8. Setbacks; Other Restrictions.**

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

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

18 (2) If the premises is greater than one-half (0.5) of an acre in
19 size but less than five (5) acres in size, each detached structure
20 or outdoor area constituting the single cultivation area shall be
21 set back at least fifty (50) feet from all boundaries of the
22 premises, unless the Director of the Department of Development
23 Services or his or her designee reduces or waives this requirement
24 based upon a finding of unusual hardship for that particular parcel
25 to comply with such setback requirements. Such cultivation area

1 shall be measured from the outer edge of the marijuana plant canopy
2 and not the stalk. Owners of parcels adjacent to such premises
3 shall be notified in writing of any exercise of such discretion
4 under this section.

5 (3) If the premises is equal to or greater than five (5) acres in
6 size but less than ten (10) acres in size, each detached structure
7 or outdoor area constituting the single cultivation area shall be
8 set back at least seventy-five (75) feet from all boundaries of
9 the premises, unless the Director of the Department of Development
10 Services or his or her designee reduces or waives this requirement
11 based upon a finding of unusual hardship for that particular parcel
12 to comply with such setback requirements. Owners of parcels
13 adjacent to such premises shall be notified in writing of any
14 exercise of such discretion under this section.

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

24 (5) With respect to subsections 34A-8(a)(2-4), such setback
25 distance shall be measured in a straight line from the building in

1 which the marijuana is cultivated or if the marijuana is cultivated
2 in an outdoor area, from the fence required by section 34A-10, to
3 the boundary line of the premises.

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

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

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

12 (3) Outdoors within one hundred (100) feet of any occupied
13 residential structure located on a separate legal parcel,
14 provided, however, that any person cultivating pursuant to section
15 34A-4(a)(2) shall not grow outdoors within fifty (50) feet of any
16 occupied residential structure located on a separate legal parcel.

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

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

21 (A) Commercial Zones (GC (General Commercial), NC
22 (Neighborhood Commercial), CC (Community Commercial), REC
23 (Recreation Commercial), SE (Sports and Entertainment), MU (Mixed
24 Use));

1 (B) Industrial Zones (LI (Limited Industrial), GI (General
2 Industrial), HI (Heavy Industrial)); and

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

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

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

21 (e) Persons processing marijuana on the premises shall meet the
22 following requirements:

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

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

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

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 written permission (including notarized signatures) 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 requirements. The fence must be adequately secure to prevent unauthorized entry. Bushes or

1 hedgerows may constitute an adequate fence under this Chapter on
2 parcels five (5) acres and above in size.

3 **34A-11 Public Nuisance; Violations.**

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

7 **34A-12 Enforcement.**

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

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

19 **34A-13 Abatement procedures.**

20 (a) Whenever the Director of Development Services, or his or her
21 designee determines that a public nuisance (as defined in this
22 Chapter) exists, he or she, or his or her designee, shall request
23 in writing that the public nuisance be abated within seventy-two
24 (72) hours. If the nuisance continues beyond that seventy-two (72)
25 hour period, the Director of Development Services, or his or her

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

11 **NOTICE OF NUISANCE ABATEMENT HEARING**

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

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 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,

1 sufficient to persuade the Hearing Officer that a
2 public nuisance exists on your property, you will then
3 have the burden of proving that no public nuisance
4 exists on your property. Therefore, you should be
5 prepared to introduce oral and documentary evidence
6 proving why, in your opinion, your use of the property
7 is not a public nuisance as defined in this Chapter. A
8 copy of the Butte County Code Chapter 34A relating to
9 Medical Marijuana Cultivation nuisance abatement
10 hearings is enclosed to assist you in the preparation
11 of your presentation.

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

21 Further, if the Hearing Officer finds that a public
22 nuisance exists on your property and you fail to abate
23 the nuisance promptly, the County may abate the
24 nuisance. If the County abates the nuisance, you may
25 be responsible for the actual costs of the abatement,

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

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

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

1 Dated: _____/_____/_____

2 BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

3 By:_____

4 Enclosure: Butte County Code Chapter 34A

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

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

(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

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

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

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

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

22 (i) The decision of the Hearing Officer or Board of Supervisors
23 may be recorded by the Director of Development Services. In the
24 event of such recordation and in the further event that the
25 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.

(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

1 summaries, reports, notices, correspondence, warrants and hearing
2 packets. The time expended by Development Services and Auditor-
3 Controller staff, to calculate the above costs and prepare itemized
4 invoices, may also be recovered.

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

11 **34A-15 Non-exclusive remedy.**

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

15 **34A-16 Administrative Civil Penalties.**

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

20 (a) Five hundred dollars (\$500.00) per day for the first
21 violation; and one thousand dollars (\$1,000.00) per day for each
22 subsequent violation of this Chapter for each day that the
23 violation exists after the date of mailing of the notice of
24 violation through to its abatement by whatever means.

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

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

14 Section 3. If any provision of this Chapter or the application
15 thereof to any person or circumstance is for any reason held to be
16 invalid by a court of competent jurisdiction, such provision shall
17 be deemed severable, and the invalidity thereof shall not affect
18 the remaining provisions or other applications of the Chapter which
19 can be given effect without the invalid provisions or application
20 thereof.

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