

ORDINANCE NO. _____

**ORDINANCE ADDING CHAPTER 9.31 TO TITLE 9 OF THE
MENDOCINO COUNTY CODE ENTITLED
"MARIJUANA CULTIVATION"**

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

Chapter 9.31 is added to Title 9 of the Mendocino County Code to read as follows:

"MARIJUANA CULTIVATION

Section 9.30.010 Purpose And Intent.

It is the purpose and intent of this ordinance to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, morals, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino. Nothing in this chapter shall be construed to allow the use of cannabis for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

Section 9.31.020 Findings.

1. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996").
2. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The Act further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."
3. The State enacted SB 420 in 2004 (codified as Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act of 1996 and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.
4. Pursuant to Health & Safety Code § 11362.77(a), qualified patients and their qualified caregivers are allowed to maintain up to six (6) mature or twelve (12) immature marijuana plants and possess no more than eight (8) ounces of dried, processed marijuana without criminal prosecution under state law.
5. Health & Safety Code § 11362.77(c) permits a County to adopt a policy allowing qualified patients or primary caregivers to exceed the limits in Health & Safety Code § 11362.77(a).

6. In accordance with Health & Safety Code § 11367.77(c), the Mendocino County Board of Supervisors has adopted a policy permitting a qualified patient or caregiver to maintain no more than twenty-five (25) marijuana plants and to possess no more than two (2) pounds of processed marijuana per year.
7. Under the Controlled Substances Act, the use, possession and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.
8. Following the enactment of the Compassionate Use Act of 1996, persons with residence addresses in the County have been issued medical marijuana identification cards by the Mendocino County Public Health Department.
9. Marijuana plants, as they begin to flower and for a period of two months or more during the growing season (August – October for outdoor grows), produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries. One popular strain of marijuana is called “Skunk” or “Super Skunk” and has a strong odor that resembles the smell of a skunk.
10. During the 2004 growing season, the County received numerous complaints of odor related to the growing of marijuana in residential neighborhoods. The Mendocino County Air Quality Management District (MCAQMD) reports an accelerating increase in formal air quality complaints associated with the growing of marijuana in residential neighborhoods within inland Mendocino County.
11. The Drug Enforcement Administration reports that various types of cannabis plants under various planting conditions may yield averages of 236 grams, or about one-half (½) pound, to 846 grams, or nearly two (2) pounds. A weighted average results in an average domestic plant yield of 448 grams, or approximately one (1) pound per plant.
12. Pound prices for domestically produced high-grade marijuana sold illegally within Northern California can reach \$2,000 to \$5,000 (National Drug Intelligence Center, *California Northern and Eastern Districts Drug Threat Assessment*, January, 2001). Accordingly, a single, mature domestic plant may produce marijuana with a market value of more than \$2,000. A medical marijuana garden consisting of six (6) mature plants as authorized by SB 420 may have a potential market value in excess of \$12,000.
13. In accordance with Health & Safety Code § 11362.77(c), the Mendocino County Board of Supervisors has adopted a policy permitting a qualified person or caregiver to maintain up to twenty-five (25) marijuana plants and to possess up to two (2) pounds of processed marijuana per year. Therefore, in the case of multiple qualified patients who are in possession or control of the same legal Parcel of property, or in the case of a caregiver growing for numerous patients, literally hundreds of marijuana plants may be grown on the same legal Parcel in Mendocino County.

14. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, and armed robbery.

15. There have been several marijuana cultivation related incidents, some including acts of violence.

16. The right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By permitting no more than twenty-five (25) marijuana plants on any one legal parcel, the County anticipates a significant reduction in the complaints of odor and the risks of crime described herein.

17. It is the County's intention that nothing in this ordinance shall permit any activity that is prohibited under the federal Controlled Substances Act. It is also the County's intention that nothing in this ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal.

18. The County finds that cultivation of more than twenty-five (25) marijuana plants on any one legal Parcel within the unincorporated area of the County for medicinal purposes will likely result in an unreasonable risk of crime and will create offensive odors to persons living nearby notwithstanding the limitations on cultivation that are imposed within this chapter. The County further finds that the indoor cultivation of more than twenty-five (25) plants on one legal Parcel may require excessive use of electricity which may create an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation. In addition, the County finds that the indoor cultivation of more than twenty-five plants on one legal Parcel creates a substantial risk of burglary, robbery, and armed robbery.

Section 9.31.030 Definitions.

As used herein the following definitions shall apply:

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

2. "Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof."

3. "Legal Parcel" means a parcel of land for which one legal title exists.

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

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

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

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

8. "Zip-ties" means plastic ties with individualized numbers stamped on them, issued by the Mendocino County Sheriff's Office for the purpose of identifying a legal marijuana plant.

Section 9.31.040 Cultivation Of Marijuana.

(a) It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any unincorporated area of the County to cause or allow such premises to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes as described herein or to cultivate or allow the cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed within Section 9.31.050.

(b) Nothing in this section shall be construed as a limitation on the County's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

Section 9.31.050 Cultivation Of More Than Twenty-Five (25) Marijuana Plants, Indoors Or Outdoors, On One Legal Parcel Is Declared A Public Nuisance.

The cultivation of more than twenty-five (25) marijuana plants, either indoors or outdoors, regardless of whether the person growing the marijuana is a "qualified patient" or "primary caregiver" is a public nuisance.

Section 9.31.060 "Zip-Tie" Requirement.

(a) For the convenience of the property owner and to assist in the enforcement of this ordinance, and to avoid unnecessary confiscation and

destruction of medicinal marijuana plants, all marijuana grown for medicinal purposes on each parcel in unincorporated Mendocino County may have “zip-ties” issued by the Mendocino County Sheriff’s Office. Said “zip-ties” must be placed on each individual marijuana plant.

(b) “Zip-Ties” can be obtained through the Mendocino County Sheriff’s Office. All applicants for “zip-ties” must present a state-issued medical marijuana card or a valid medical recommendation. The fee for the “zip-ties” shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations.

Section 9.31.070 Limitation On Number Of Plants.

(a) The cultivation of more than twenty-five (25) marijuana plants on any legal Parcel, either inside or outside, within the unincorporated area of the County is a public nuisance. This limitation shall be imposed regardless of the number of qualified patients residing at such location. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the caregiver(s) for qualified patients.

(b) Wherever medical marijuana is grown, a copy of a a current and valid, state-issued marijuana card or physician recommendation must be displayed in such a manner as to allow law enforcement officers to easily see the card without having to enter any building of any type.

Section 9.31.080 Notice To Legal Owner Of Legal Parcel Where Marijuana Is Grown.

Any person who is not the legal owner of a parcel and who is cultivating marijuana on said parcel shall give written notice to the legal owner of the parcel prior to commencing cultivation of marijuana on said parcel and shall post notice at the cultivation site that the landowner has been informed.

Section 9.31.090 Limitation On Location To Cultivate Marijuana.

(a) The cultivation of marijuana, in any amount or quantity, shall not be allowed in the following areas:

- (1) Within 1,000 feet of a youth-oriented facility, a school, or a park; or
- (2) Within 1,000 feet of any school bus stop.
- (3) Within 1,000 feet of any “church” as defined herein.

(b) The distance between a legal Parcel and the above-listed uses shall be made in a straight line from the boundary line of the property on which a qualified patient or caregiver wishes to cultivate to the boundary of the property on which

the facility, building, structure, or roadway, or portion of the building, structure, or roadway in which the above-listed use occurs is located.

Section 9.31.100 Fencing Requirement For All Outdoor Cultivation.

All marijuana grown outside of any building must be fully enclosed by a fence at least six (6) feet in height. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions.

Section 9.31.110 Enforcement.

(a) The County may abate the violation of this ordinance by the prosecution of a civil action including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this ordinance or requiring compliance with other terms.

(b) The County may also seek enforcement by abatement as a nuisance pursuant to Mendocino County Code Section 8.75 et. seq. (Nuisance Abatement). All sections set forth in said sections shall be applicable to abating any nuisance caused by the “cultivation” of marijuana, including procedures, time limits and fee and fine schedules. Such proceedings may include seeking warrants from the Mendocino County Superior Court to inspect property and for nuisance abatement by eradicating marijuana cultivated in violation of this ordinance. Nuisance abatement may, at the County’s election, be commenced in accordance with the procedures set forth in the Mendocino County Code (MCC).

Section 9.31.120 Compliance With CEQA.

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

Section 9.31.130 Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the

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

Section 9.31.150. Twelve Month Review.

This Board will review within twelve months of adoption the implementation and enforcement of this Ordinance.

Section 9.31.160 Effective Date.

The Clerk of the Board will publish this Ordinance as required by law. This Ordinance shall take effect thirty (30) days after passage.”

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2007, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

CHAIR, Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of Said Board

By: _____

APPROVED AS TO FORM:

JEANINE B. NADEL, County Counsel

By: _____