

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of October 28, 2014

AN ORDINANCE OF THE COUNTY OF HUMBOLDT AMENDING TITLE III, DIVISION 1, CHAPTER 3, SECTION 313-55.1 & CHAPTER 4, SECTION 314-55.1 OF THE HUMBOLDT COUNTY ZONING CODE AND ADDING SECTIONS 313-55.2 AND 314-55.2 RELATING TO THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA FOR PERSONAL USE ON PARCELS FIVE (5) ACRES OR LESS IN SIZE

ORDINANCE NO. 2523

THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 313-55.1 of Chapter 3 of Division 1 of Title III is amended to read as follows:

313-55- MEDICAL MARIJUANA LAND USES: COASTAL

55.1 Indoor Residential Cultivation of Medical Marijuana for Personal Use

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code sections 65850, 25845, and 53069.4 and California Health and Safety Code sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the "Medical Marijuana Land Use Code for Indoor Cultivation".

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code for Indoor Cultivation ("MMLUCIC" or "this Code") is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient's use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Applicability and Interpretation

55.1.3.1 The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.

55.1.3.2 Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.

55.1.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

55.1.3.4 The definitions in this Code are intended to apply to the MMLUCIC. Applicable definitions in Humboldt County Code sections 313-136 et seq. and 111-1 et seq. may also apply to this Code.

55.1.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the Attorney General of the State of California, or the Attorney General of the United States of America.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's medical marijuana abatement procedures as put forth in Section 313-55.2.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. For the purposes of this Section, a greenhouse or hoop house shall not be considered to be a detached accessory building.

Indoor(s): within a fully enclosed and secure structure that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of fifty (50) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

55.1.8.1 Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and

55.1.8.2 Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and

55.1.8.3 A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and

55.1.8.4 The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and

55.1.8.5 Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total; and

55.1.8.6 All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and

55.1.8.7 The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and

- 55.1.8.8 No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
- 55.1.8.9 On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and
- 55.1.8.10 From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
- 55.1.8.11 Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
- 55.1.8.12 No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
- 55.1.8.13 The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
- 55.1.8.14 The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
- 55.1.8.15 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
- 55.1.8.16 The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and

55.1.8.17 The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.

55.1.8.18 A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

55.1.8.19 Outdoor cultivation, as described in Section 313-55.2, may not occur on any parcel in addition to the indoor cultivation provisions described herein.

SECTION 2. Section 313-55.2 of Chapter 3 of Division 1 of Title III is added to read as follows:

55.2 Outdoor Cultivation of Medical Marijuana for Personal Use on Small Parcels

55.2.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code sections 65850, 25845, and 53069.4 and California Health and Safety Code sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code for Small Parcel Outdoor Cultivation”.

55.2.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code for Small Parcel Outdoor Cultivation (“MMLUCSPOC” or “this Code”) is to establish reasonable regulations governing the outdoor cultivation of medical marijuana for personal use as defined herein, in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the cultivation and processing of medical marijuana for an individual patient’s personal use; and the need to eliminate, or at least limit to the greatest extent possible, harmful environmental impacts that can accompany outdoor marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.2.3 Applicability and Interpretation

55.2.3.1 The outdoor cultivation and processing of medical marijuana on parcels ~~below~~ five (5) acres or less in size within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the governed activities were established or occurred prior to the adoption of this Code.

55.2.3.2 Nothing in this Code is intended to exempt, nor shall it be construed to exempt any outdoor cultivation activities on parcels five (5) acres or less in size from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.

55.2.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

55.2.3.4 The definitions in this Code are intended to apply to the MMLUCSPOC. Applicable definitions in Humboldt County Code sections 313-136 et seq. and 111-1 et seq. may also apply to this Code.

55.2.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the Attorney General of the State of California, or the Attorney General of the United States of America.

55.2.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.2.6 Definitions

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

Acre: means 43,560 square feet. See also the definition of “Lot Size” found under Section 313-147 of the code.

Canopy: means the area, in square feet, of vegetative growth, of a marijuana plant including starts. Area shall be calculated using the following formula: Diameter of Plant squared, and then multiplied by the conversion factor ($\pi/4$). For example, if the diameter of one (1) plant is equal to 30 inches (2.5 feet), the canopy would equal 4.9 square feet [2.5 feet² x 0.7854].

Cultivation: means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any outdoor location.

Enforcing Officer: means the Code Enforcement Investigator or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Code.

Indoor Cultivation of Medical Marijuana: cultivation and processing of medical marijuana inside a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Marijuana Plant: means any mature or immature male or female marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.

Outdoor(s): means not within an enclosed building, excepting a greenhouse or hoophouse, but instead on an open and uncovered portion of the property.

Public Park: means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.

Property: shall mean a single, legal parcel. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “property” for purposes of this Section.

Personal Use Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient’s exclusive use.

Pesticides: shall have the same meaning as set forth in Article 1, Division 6, Section 6000 of the California Code of Regulations, and Article 1, Division 7, Section 12753 of the California Food and Agriculture Code.

Place of Religious Worship: a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

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

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

Traditional Native American Cultural Site: means a place with an association with cultural practices and beliefs that are rooted in the local tribal history and are important to maintaining the continuity of a tribal community's traditional beliefs and practices.

55.2.7 Outdoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's outdoor cultivation of medical marijuana for that patient's personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, outdoor medical marijuana cultivation and processing for personal use on parcels five (5) acres or less in size, shall be in conformance with the following standards:

55.2.7.1 Parcel size shall be determined in accordance with the definition of "Lot Size" found under Section 313-147 of the code.

55.2.7.2 On parcels (5) acres or less in size, it shall not be deemed a nuisance per se for a qualified patient to cultivate medical marijuana outdoors for personal use as an alternative to indoor cultivation, as defined herein, if the following restrictions are adhered to:

- 55.2.7.2.1 On parcels one (1) acre or smaller in size, the total plant canopy of the medical marijuana cultivated outdoors may not exceed one hundred (100) square feet in size, nor may cultivation occur within twenty (20) feet of a property boundary line; and
- 55.2.7.2.2 On parcels greater than one (1) acre and up to five (5) acres in size, the total plant canopy of medical marijuana cultivated outdoors may not exceed two hundred (200) square feet in size, nor may cultivation occur within forty (40) feet of a property boundary line, where the neighboring parcel is less than five (5) acres in size, or twenty (20) feet of a property line, where the neighboring parcel is five (5) acres or above in size; and
- 55.2.7.2.3 No outdoor cultivation may occur within 600 feet of any School, School Bus Stop, Public Park, Place of Religious Worship, or Traditional Native American Cultural Site, so long as these uses existed prior to the outdoor cultivation of medical marijuana in compliance with this Code; and
- 55.2.7.2.4 Indoor medical marijuana cultivation may not occur in addition to the outdoor cultivation provisions described herein.
- 55.2.7.2.5 The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence, or detached accessory building, or outdoor cultivation area within the jurisdiction of the County of Humboldt; and
- 55.2.7.2.6 Cultivation within a greenhouse or “hoophouse” shall be deemed outdoor cultivation subject to the requirements of this Code, including the parcel-size-specific canopy restrictions and setbacks.
- 55.2.7.2.7 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other man-made or natural drainage systems including those that lead to rivers, streams and bays as a result of indoor or outdoor residential cultivation of medical marijuana; and
- 55.2.7.2.8 The outdoor cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
- 55.2.7.2.9 Where applicable, private water systems utilized in association with outdoor cultivation of medical marijuana pursuant to this Code shall comply with Section 1602 of the Fish and Game Code. This includes notification of the California Department of Fish and Wildlife of associated water diversions to determine whether a Lake and Streambed Alteration Agreement is necessary. If such an Agreement is required, the water use must comply with all of its terms.

55.2.7.3 On lands within the Shelter Cove community served by the Resort Improvement District, outdoor cultivation of medical marijuana for personal use may only occur by a qualified patient who occupies a permitted residence located on the same property that is host to the cultivation activities. If the qualified patient is not the owner of the property, the occupant must be a leaseholder or lawful occupant who has retained the notarized consent of the property owner, or their designated agent.

55.2.8 Nuisance Declared; Specialized Abatement Process; Enforcement

55.2.8.1 Any violation of this Section shall be unlawful and constitute a public nuisance per se and be subject to injunction, abatement, or any other remedy available to the County as provided by all applicable provisions of law, including the specialized abatement process of this Code.

55.2.8.2 Notice to Abate Unlawful Marijuana Cultivation. Whenever an Enforcing Officer determines that a public nuisance as described in this Code exists on any property within the unincorporated area of Humboldt County he or she is authorized to notify the owner and/or occupant(s) of the premises through issuance of a "Notice and Order to Abate Unlawful Marijuana Cultivation".

55.2.8.2.1 Contents of Notice. The "Notice and Order to Abate Unlawful Marijuana Cultivation" shall be in writing and shall include the following:

55.2.8.2.1.1 Name of the owner(s) of the property upon which the nuisance exists, as listed in the records of the county assessor, and any occupant(s) shall also be identified, if known; and

55.2.8.2.1.2 A description of the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property and/or identification of such property by reference to the assessor's parcel number; and

55.2.8.2.1.3 A statement that medical marijuana cultivation in violation of this Section exists on the property and therefore such cultivation is a public nuisance per se.

55.2.8.2.1.4 A description of the medical marijuana cultivation in violation of this Section that exists on the property and the actions required to abate it.

55.2.8.2.1.5 A statement that the owner and/or occupant is required to abate the identified violations of this Code within fourteen (14) calendar days after the date that said Notice was served.

55.2.8.2.1.6 A statement that the owner and/or occupant may, within ten (10) calendar days after the date that said Notice was served, make a request in writing to

the Clerk of the Board of Supervisors for a hearing to appeal the determination of the Enforcing Officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this Section.

55.2.8.2.1.7 A statement that, unless the owner and/or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within the time prescribed in the Notice, the Enforcing Officer will abate the nuisance. It shall also generally describe the abatement costs, including administrative costs, and provide notice that a special assessment may be added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll if such costs are unpaid.

55.2.8.3 Service of Notice. The “Notice and Order to Abate Unlawful Marijuana Cultivation” (“Notice and Order”) shall be served by delivering it personally to the owner and/or to the occupant, or by mailing it by regular United States mail, together with a certificate of mailing, to the owner and/or occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll and by posting a copy of the Notice and Order on the real property upon which the nuisance exists as follows: copies of the Notice and Order shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two (2) copies of the Notice and Order be posted on a property pursuant to this section.

55.2.8.3.1 The date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable.

55.2.8.4 Administrative Review.

55.2.8.4.1 Any person upon whom a Notice and Order to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the Enforcing Officer that the conditions set forth in the Notice and Order constitute a public nuisance to the Board of Supervisors, or may show cause before the Board of Supervisors why those conditions should not be abated in accordance with the provisions of this Section. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within ten (10) calendar days after the date that said Notice and Order was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this Section, the findings of the Enforcing Officer contained in the Notice and Order shall become final and conclusive on the eleventh day following service of the Notice and Order.

55.2.8.4.2 Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the Clerk of the Board of Supervisors shall set a hearing date not less than seven (7) days or more than thirty (30) days from the

date the request was filed. The Clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the Notice and Order was served, and to the Enforcing Officer.

55.2.8.4.3 Any hearing conducted pursuant to this Section need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Board of Supervisors has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

55.2.8.4.4 The Board of Supervisors may continue the administrative hearing from time to time.

55.2.8.4.5 The Board of Supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the Notice and Order. The Board of Supervisors shall issue a written decision in the form of a resolution, which shall include findings relating to the existence or nonexistence of the nuisance, as well as findings concerning the propriety and means of abatement of the nuisance conditions set forth in the Notice and Order. Such decision shall be mailed to the party requesting the hearing, any other parties upon whom the Notice and Order was served, and the Enforcing Officer.

55.2.8.4.6 The decision of the Board of Supervisors shall be final and conclusive on the date it is made.

55.2.8.5 Liability for Costs.

55.2.8.5.1 In any enforcement action brought pursuant to this Section, whether by administrative or judicial proceedings, each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Section, whether those costs are incurred prior to, during, or following enactment of this Section.

55.2.8.5.2 In any action by the Enforcing Officer to abate unlawful marijuana cultivation under this Section, whether by administrative proceedings or judicial proceedings, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this Code shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action,

administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

55.2.8.6 Abatement by Owner or Occupant. Any owner or occupant may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by the enforcing officer.

55.2.8.7 Enforcement. Whenever the Enforcing Officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within fourteen (14) days of the date of service of the Notice and Order, unless timely appealed, or of the date of the decision of the Board of Supervisors requiring such abatement, the Enforcing Officer may take one or more of the following actions:

55.2.8.7.1 Enter upon the property and abate the nuisance. The Enforcing Officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the abatement work, if necessary; and/or

55.2.8.7.2 Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.

55.2.8.8 Accounting. The Enforcing Officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Board of Supervisors showing the cost of abatement and the administrative costs for each parcel.

55.2.8.9 Notice of Hearing on Accounting; Waiver by Payment. Upon receipt of the account of the Enforcing Officer, the Clerk of the Board of Supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than five (5) business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the Enforcing Officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

55.2.8.10 Hearing on Accounting.

55.2.8.10.1 At the time fixed, the Board of Supervisors shall meet to review the report on the accounting by the Enforcing Officer. An owner may appear at said time and be heard on whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner, is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.

- 55.2.8.10.2 The report and the accounting of the Enforcing Officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.
- 55.2.8.10.3 Modifications. The Board of Supervisors shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.
- 55.2.8.10.4 Special Assessment and Lien. The Board of Supervisors may order that the cost of abating nuisances pursuant to this Section and the administrative costs as confirmed by the Board be placed upon the County tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the Government Code; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to section 25845 of the Government Code.
- 55.2.8.11 Enforcement by Civil Action. As an alternative to the procedures set forth in this Section the County may abate the violation of this Section by the prosecution of a civil action through the Office of the County Counsel, 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 Section or requiring compliance with other terms.
- 55.2.8.12 No Duty to Enforce. Nothing in this Section shall be construed as imposing on the enforcing officer or the County of Humboldt any duty to issue an Notice and Order, 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 of Humboldt 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.
- 55.2.8.13 Remedies Cumulative. All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Section shall be deemed to authorize or permit any activity that violates any provision of state or federal law.
- 55.2.8.14 Other Nuisance. Nothing in this Section shall be construed as a limitation on the County's authority to abate any nuisance which may otherwise 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.

55.2.9 Best Practices

The following guidelines are advisory and represent “good neighbor” cultivation practice recommendations designed to insure compatibility with adjacent land uses, medicine safety, and responsible environmental stewardship.

- 55.2.9.1 **Low Odor Strains.** To alleviate the potential the potential for unwelcome odors escaping beyond the property and affecting neighboring residents during the flowering period, cultivation of low odor strains is recommended.
- 55.2.9.2 **Greenhouses.** If cultivating within a greenhouse, invest in a permanent greenhouse with a poured concrete or similar foundation, walls and roof made using tempered glass or other similarly durable solid material, and a filtration system to minimize odors.
- 55.2.9.3 **Water Supply.** To reduce potential impacts on neighboring rivers and streams and the fish and wildlife that depend on these ecosystems, cultivating using water from a municipal source or rain catchment system. If a private water system must be used, maintain sufficient water storage capacity to satisfy or supplement watering needs during the driest months, July 15th through November 1st.
- 55.2.9.4 **Potential Toxics.** Avoid use of chemicals and other potentially harmful substances on or near medical marijuana or the area where medical marijuana is being cultivated. Grow, process, and store medical marijuana in as “organic” and safe a fashion as possible to reduce potential adverse effects during use by medical patients who are ill and may have compromised immune systems.
- 55.2.9.5 **Best Practices.** Review and consider implementing the recommendations contained in Best Management Practices –Northern California Farmer’s Guide.

SECTION 3. Section 314-55.1 of Chapter 4 of Division 1 of Title III is amended to read as follows:

314-55 MEDICAL MARIJUANA LAND USES: INLAND

55.1 Indoor Residential Cultivation of Medical Marijuana for Personal Use

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code sections 65850, 25845, and 53069.4 and California Health and Safety Code sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code for Indoor Cultivation”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code for Indoor Cultivation (“MMLUCIC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Applicability and Interpretation

55.1.3.1 The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.

55.1.3.2 Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state

construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or any other applicable state or federal laws.

55.1.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

55.1.3.4 The definitions in this Code are intended to apply to the MMLUCIC. Applicable definitions in Humboldt County Code sections 314-136 et seq. and 111-1 et seq. may also apply to this Code.

55.1.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the Attorney General of the State of California, or the Attorney General of the United States of America.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's medical marijuana abatement procedures as put forth in Section 314-55.2.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. For the purposes of this Section, a greenhouse or hoop house shall not be considered to be a detached accessory building.

Indoor(s): within a fully enclosed and secure structure that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of fifty (50) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use outside the coastal zone, so long as the cultivation is in conformance with this Code and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent

possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

- 55.1.8.1 Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
- 55.1.8.2 Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
- 55.1.8.3 A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
- 55.1.8.4 The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
- 55.1.8.5 Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total; and
- 55.1.8.6 All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
- 55.1.8.7 The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
- 55.1.8.8 No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
- 55.1.8.9 On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting

neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and

55.1.8.10 From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and

55.1.8.11 Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and

55.1.8.12 No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and

55.1.8.13 The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and

55.1.8.14 The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and

55.1.8.15 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and

55.1.8.16 The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and

55.1.8.17 The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.

55.1.8.18 A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

55.1.8.19 Outdoor cultivation, as described in Section 314-55.2, may not occur on any parcel in addition to the indoor cultivation provisions described herein.

SECTION 4. Section 314-55.2 of Chapter 4 of Division 1 of Title III is added to read as follows:

55.2 Outdoor Cultivation of Medical Marijuana for Personal Use on Small Parcels

55.2.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code sections 65850, 25845, and 53069.4 and California Health and Safety Code sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code for Small Parcel Outdoor Cultivation”.

55.2.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code for Small Parcel Outdoor Cultivation (“MMLUCSPOC” or “this Code”) is to establish reasonable regulations governing the outdoor cultivation of medical marijuana for personal use as defined herein, in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the cultivation and processing of medical marijuana for an individual patient’s personal use; and the need to eliminate, or at least limit to the greatest extent possible, harmful environmental impacts that can accompany outdoor marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.2.3 Applicability and Interpretation

55.2.3.1 The outdoor cultivation and processing of medical marijuana on parcels ~~below~~ five (5) acres or less in size within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the governed activities were established or occurred prior to the adoption of this Code.

55.2.3.2 Nothing in this Code is intended to exempt, nor shall it be construed to exempt any outdoor cultivation activities on parcels five (5) acres or less in size, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or any other applicable state or federal laws.

55.2.3.3 Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

55.2.3.4 The definitions in this Code are intended to apply to the MMLUCSPOC. Applicable definitions in Humboldt County Code sections 314-136 et seq. and 111-1 et seq. may also apply to this Code.

55.2.4 Compliance with Other Laws.

No provision of this Section shall be constructed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or federal law or this Code. Nothing in this Section shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this Section may be deemed a defense or immunity to any action brought against any person by the Humboldt County District Attorney, the attorney General of the State of California, or the Attorney General of the United States of America.

55.2.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.2.6 Definitions

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

Acre: means 43,560 square feet. See also the definition of “Lot Size” found under Section 314-147 of the code.

Canopy: means the area, in square feet, of vegetative growth, of a marijuana plant including starts. Area shall be calculated using the following formula: Diameter of Plant squared, and then multiplied by the conversion factor ($\pi/4$). For example, if the diameter of one (1) plant is equal to 30 inches (2.5 feet), the canopy would equal 4.9 square feet [2.5 feet² x 0.7854].

Cultivation: means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any outdoor location.

Enforcing Officer: means the Code Enforcement Investigator or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Code.

Indoor Cultivation of Medical Marijuana: cultivation and processing of medical marijuana inside a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Marijuana Plant: means any mature or immature male or female marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.

Outdoor(s): means not within an enclosed building, excepting a greenhouse or hoophouse, but instead on an open and uncovered portion of the property.

Public Park: means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.

Property: shall mean a single, legal parcel. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “property” for purposes of this Section.

Personal Use Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient’s exclusive use.

Pesticides: shall have the same meaning as set forth in Article 1, Division 6, Section 6000 of the California Code of Regulations, and Article 1, Division 7, Section 12753 of the California Food and Agriculture Code.

Place of Religious Worship: a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

School: means an institution of learning for minors, whether public or private, offering a regular course of instruction as required by the California Education Code. This definition includes a kindergarten, elementary school, middle or junior high school, senior high school, or any special

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

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

Traditional Native American Cultural Site: means a place with an association with cultural practices and beliefs that are rooted in the local tribal history and are important to maintaining the continuity of a tribal community's traditional beliefs and practices.

55.2.7 Outdoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's outdoor cultivation of medical marijuana for that patient's personal use outside the coastal zone, so long as the cultivation is in conformance with this Code and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, outdoor medical marijuana cultivation and processing for personal use on parcels five (5) acres or less in size shall be in conformance with the following standards:

55.2.7.1 Parcel size shall be determined in accordance with the definition of "Lot Size" found under Section 314-147 of the code.

55.2.7.2 On parcels five (5) acres or less in size, it shall not be deemed a nuisance per se for a qualified patient to cultivate medical marijuana outdoors for personal use as an alternative to indoor cultivation, as defined herein, if the following restrictions are adhered to:

55.2.7.2.1 On parcels one (1) acre or smaller in size, the total plant canopy of the medical marijuana cultivated outdoors may not exceed one hundred (100) square feet in size, nor may cultivation occur within twenty (20) feet of a property boundary line; and

55.2.7.2.2 On parcels greater than one (1) acre and up to five (5) acres in size, the total plant canopy of medical marijuana cultivated outdoors may not exceed two hundred (200) square feet in size, nor may cultivation occur within forty (40) feet of a property boundary line, where the neighboring parcel is less than five (5) acres in size, or twenty (20) feet of a property line, where the neighboring parcel is five (5) acres or above in size; and

55.2.7.2.3 No outdoor cultivation may occur within 600 feet of any School, School Bus Stop, Public Park, Place of Religious Worship, or Traditional Native American Cultural Site, so long as these uses existed prior to the outdoor cultivation of medical marijuana in compliance with this Code; and

55.2.7.2.4 Indoor medical marijuana cultivation may not occur in addition to the outdoor cultivation provisions described herein; and

55.2.7.2.5 The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence, or detached accessory building, or outdoor cultivation area within the jurisdiction of the County of Humboldt; and

55.2.7.2.6 Cultivation within a greenhouse or “hoophouse” shall be deemed outdoor cultivation and subject to the requirements of this Code, including the parcel-size-specific canopy restrictions and setbacks.

55.2.7.2.7 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other man-made or natural drainage systems including those that lead to rivers, streams and bays as a result of indoor or outdoor residential cultivation of medical marijuana; and

55.2.7.2.8 The outdoor cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and

55.2.7.2.9 Where applicable, private water systems utilized in association with outdoor cultivation of medical marijuana pursuant to this Code shall comply with Section 1602 of the Fish and Game Code. This includes notification of the California Department of Fish and Wildlife of associated water diversions to determine whether a Lake and Streambed Alteration Agreement is necessary. If such an Agreement is required, the water use must comply with all of its terms.

55.2.7.3 On lands within the Shelter Cove community served by the Resort Improvement District, outdoor cultivation of medical marijuana for personal use may only occur by a qualified patient who occupies a permitted residence located on the same property that is host to the cultivation activities. If the qualified patient is not the owner of the property, the occupant must be a leaseholder or lawful occupant who has retained the notarized consent of the property owner, or their designated agent.

55.2.8 Nuisance Declared; Specialized Abatement Process; Enforcement

55.2.8.1 Any violation of this Section shall be unlawful and constitute a public nuisance per se and be subject to injunction, abatement, or any other remedy available to the County as provided by all applicable provisions of law, including the specialized abatement process as provided for in this Code.

55.2.8.2 Notice to Abate Unlawful Marijuana Cultivation. Whenever an Enforcing Officer determines that a public nuisance as described in this Code exists on any property

within the unincorporated area of Humboldt County he or she is authorized to notify the owner and/or occupant(s) of the premises through issuance of a "Notice and Order to Abate Unlawful Marijuana Cultivation".

55.2.8.2.1 Contents of Notice. The "Notice and Order to Abate Unlawful Marijuana Cultivation" shall be in writing and shall include the following:

55.2.8.2.1.1 Name of the owner(s) of the property upon which the nuisance exists, as listed in the records of the county assessor, and any occupant(s) shall also be identified, if known; and

55.2.8.2.1.2 A description of the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property and/or identification of such property by reference to the assessor's parcel number; and

55.2.8.2.1.3 A statement that medical marijuana cultivation in violation of this Section exists on the property and therefore such cultivation is a public nuisance per se.

55.2.8.2.1.4 A description of the medical marijuana cultivation in violation of this Section that exists on the property and the actions required to abate it.

55.2.8.2.1.5 A statement that the owner and/or occupant is required to abate the identified violations of this Code within fourteen (14) calendar days after the date that said Notice was served.

55.2.8.2.1.6 A statement that the owner and/or occupant may, within ten (10) calendar days after the date that said Notice was served, make a request in writing to the Clerk of the Board of Supervisors for a hearing to appeal the determination of the Enforcing Officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this Section.

55.2.8.2.1.7 A statement that, unless the owner and/or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within the time prescribed in the Notice, the Enforcing Officer will abate the nuisance. It shall also generally describe the abatement costs, including administrative costs, and provide notice that a special assessment may be added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll if such costs are unpaid.

55.2.8.3 Service of Notice. The "Notice and Order to Abate Unlawful Marijuana Cultivation" ("Notice and Order") shall be served by delivering it personally to the owner and/or to the occupant, or by mailing it by regular United States mail, together with a certificate of mailing, to the owner and/or occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last

equalized assessment roll and by posting a copy of the Notice and Order on the real property upon which the nuisance exists as follows: copies of the Notice and Order shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two (2) copies of the Notice and Order be posted on a property pursuant to this section.

55.2.8.3.1 The date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable.

55.2.8.4 Administrative Review.

55.2.8.4.1 Any person upon whom a Notice and Order to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the Enforcing Officer that the conditions set forth in the Notice and Order constitute a public nuisance to the Board of Supervisors, or may show cause before the Board of Supervisors why those conditions should not be abated in accordance with the provisions of this Section. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within ten (10) calendar days after the date that said Notice and Order was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this Section, the findings of the Enforcing Officer contained in the Notice and Order shall become final and conclusive on the eleventh day following service of the Notice and Order.

55.2.8.4.2 Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the Clerk of the Board of Supervisors shall set a hearing date not less than seven (7) days or more than thirty (30) days from the date the request was filed. The Clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the Notice and Order was served, and to the Enforcing Officer.

55.2.8.4.3 Any hearing conducted pursuant to this Section need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Board of Supervisors has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

55.2.8.4.4 The Board of Supervisors may continue the administrative hearing from time to time.

55.2.8.4.5 The Board of Supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the Notice and Order. The Board of Supervisors shall issue a written decision in the form of a resolution, which shall include findings relating to the existence or nonexistence of the nuisance, as well as findings concerning the propriety and means of abatement of the nuisance conditions set forth in the Notice and Order. Such decision shall be mailed to the party requesting the hearing, any other parties upon whom the Notice and Order was served, and the Enforcing Officer.

55.2.8.4.6 The decision of the Board of Supervisors shall be final and conclusive on the date it is made.

55.2.8.5 Liability for Costs.

55.2.8.5.1 In any enforcement action brought pursuant to this Section, whether by administrative or judicial proceedings, each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Section, whether those costs are incurred prior to, during, or following enactment of this Section.

55.2.8.5.2 In any action by the Enforcing Officer to abate unlawful marijuana cultivation under this Section, whether by administrative proceedings or judicial proceedings, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this Code shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

55.2.8.6 Abatement by Owner or Occupant. Any owner or occupant may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by the enforcing officer.

55.2.8.7 Enforcement. Whenever the Enforcing Officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within fourteen (14) days of the date of service of the Notice and Order, unless timely appealed, or of the date of the decision of the Board of Supervisors requiring such abatement, the Enforcing Officer may take one or more of the following actions:

55.2.8.7.1 Enter upon the property and abate the nuisance. The Enforcing Officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the abatement work, if necessary; and/or

55.2.8.7.2 Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.

55.2.8.8 Accounting. The Enforcing Officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Board of Supervisors showing the cost of abatement and the administrative costs for each parcel.

55.2.8.9 Notice of Hearing on Accounting; Waiver by Payment. Upon receipt of the account of the Enforcing Officer, the Clerk of the Board of Supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than five (5) business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the Enforcing Officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

55.2.8.10 Hearing on Accounting.

55.2.8.10.1 At the time fixed, the Board of Supervisors shall meet to review the report on the accounting by the Enforcing Officer. An owner may appear at said time and be heard on whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner, is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.

55.2.8.10.2 The report and the accounting of the Enforcing Officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.

55.2.8.10.3 Modifications. The Board of Supervisors shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.

55.2.8.10.4 Special Assessment and Lien. The Board of Supervisors may order that the cost of abating nuisances pursuant to this Section and the administrative costs as confirmed by the Board be placed upon the County tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the Government Code; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against

the respective parcels of real property pursuant to section 25845 of the Government Code.

55.2.8.11 **Enforcement by Civil Action.** As an alternative to the procedures set forth in this Section the County may abate the violation of this Section by the prosecution of a civil action through the Office of the County Counsel, 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 Section or requiring compliance with other terms.

55.2.8.12 **No Duty to Enforce.** Nothing in this Section shall be construed as imposing on the enforcing officer or the County of Humboldt any duty to issue an Notice and Order, 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 of Humboldt 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.

55.2.8.13 **Remedies Cumulative.** All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Section shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

55.2.8.14 **Other Nuisance.** Nothing in this Section shall be construed as a limitation on the County's authority to abate any nuisance which may otherwise 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.

55.2.9 Best Practices

The following guidelines are advisory and represent “good neighbor” cultivation practice recommendations designed to insure compatibility with adjacent land uses, medicine safety, and responsible environmental stewardship.

55.2.9.1 **Low Odor Strains.** To alleviate the potential the potential for unwelcome odors escaping beyond the property and affecting neighboring residents during the flowering period, cultivation of low odor strains is recommended.

55.2.9.2 **Greenhouses.** If cultivating within a greenhouse, invest in a permanent greenhouse with a poured concrete or similar foundation, walls and roof made using tempered glass or other similarly durable solid material, and a filtration system to minimize odors.

55.2.9.3 **Water Supply.** To reduce potential impacts on neighboring rivers and streams and the fish and wildlife that depend on these ecosystems, cultivating using water from a

municipal source or rain catchment system. If a private water system must be used, maintain sufficient water storage capacity to satisfy or supplement watering needs during the driest months, July 15th through November 1st.

55.2.9.4 **Potential Toxics.** Avoid use of chemicals and other potentially harmful substances on or near medical marijuana or the area where medical marijuana is being cultivated. Grow, process, and store medical marijuana in as “organic” and safe a fashion as possible to reduce potential adverse effects during use by medical patients who are ill and may have compromised immune systems.

55.2.9.5 **Best Practices.** Review and consider implementing the recommendations contained in Best Management Practices –Northern California Farmer’s Guide.

SECTION 5. Effective Date. This ordinance shall become effective as to Sections 3 and 4 (Regulations Outside the Coastal Zone) thirty (30) days after its passage. This ordinance shall become effective as to Sections 1 and 2 (Regulations Inside the Coastal Zone) immediately upon certification by the California Coastal Commission. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published at least once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this 28th day of October, 2014 on the following vote, to wit.

AYES: Supervisors Sundberg, Lovelace, Bohn, Fennell, Bass
NOES: Supervisors --
ABSENT: Supervisors --



REX BOHN, Chair of the Board of Supervisors of
the County of Humboldt, State of California

(SEAL)

ATTEST:
Kathy Hayes, Clerk of the Board of Supervisors
of the County of Humboldt, State of California

By: _____
Ana Hartwell, Deputy

FINDINGS IN SUPPORT OF RECOMMENDING THAT THE BOARD OF SUPERVISORS CERTIFY COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPT THE AMENDMENTS TO TITLE III, DIVISION 1, CHAPTER 3, SECTION 313-55.1 & CHAPTER 4, SECTION 314-55.1 OF THE HUMBOLDT COUNTY ZONING CODE AND ADOPT SECTIONS 313-55.2 AND 314-55.2 RELATING TO THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA FOR PERSONAL USE ON PARCELS FIVE (5) ACRES OR LESS IN SIZE

Having reviewed all the material in the staff report, and having heard all the testimony, the Humboldt County Planning Commission hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. 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.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”
3. In 2004, the Legislature enacted Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) to clarify the scope of the Compassionate Use Act, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.
4. In August 2008, the California Attorney General issued Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
5. The Federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

6. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
7. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the cultivation or processing of medical marijuana for personal use within the County.
8. The Compassionate Use Act and Medical Marijuana Program Act primarily address criminal law aspects of medical marijuana, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither of these laws, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of places used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Humboldt County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of areas used for marijuana cultivation is proper and necessary to avoid the risks of violent criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single parcel is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.
9. Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420. The California Supreme Court and the Court of Appeals have reaffirmed the authority of local jurisdictions to regulate medical marijuana in regards to land uses in *City of Riverside vs. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729 and *Maral v. City of Live Oak* (2013) 221 cal. App.4th 975.
10. The County's geographic isolation and climatic conditions, along with the sparse population in many areas provide conditions that are favorable to outdoor marijuana cultivation, and the County has experienced a significant increase in the number of people moving to the area seasonally to cultivate and process large amounts of marijuana. Marijuana growers can achieve a high per-plant yield because of the County's favorable growing conditions. With the use of custom soils and fertilizers, it is not uncommon for plants to grow to 12 feet in height with a canopy of six feet in diameter and produce between two (2) to four (4) pounds of dried bud. These seasonal outdoor growers are often unfamiliar with local and state regulations aimed at protecting the environment and are causing significant damage to area watersheds. Soils, fertilizers and rodenticides are commonly left behind as sites are abandoned for the winter.

11. Local law enforcement officials report that the amount of Marijuana cultivated in Humboldt County continues to increase with each growing season, with approximately 4,100 outdoor cultivation sites identified in the County at the start of the 2013 growing season. Production occurs at a scale which far exceeds the amount reasonably necessary to serve as medical marijuana for residents of the land where cultivation occurs, or patients under the care of primary caregivers. As of 2014, law enforcement indicates the value of illegal marijuana grown in the County can range from \$1,000 to \$4,000 per pound.
12. As recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
13. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. It is believed that more incidents go unreported due to the criminal nature of many cultivation operations. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
14. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes become exclusively dedicated to marijuana cultivation, the character of the neighborhood around the grow structure deteriorates.
15. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
16. Marijuana that is cultivated indoors often results in excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire. In addition, many

homes have suffered extensive damage due to unpermitted electrical, plumbing and mechanical modifications. These unsafe conditions are often caused by tenants.

17. Cultivation of marijuana may also result in public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a pungent odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, during the later stages of cultivation the highly detectable odor may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary, trespass, and robbery at these locations. Standards are therefore necessary to protect adjacent property owners and neighborhood residents from the strong odor of mature marijuana plants, to limit incompatible uses on smaller parcels, and to protect the public safety and welfare.
18. Cultivation of marijuana at locations or premises in close proximity of schools, school bus stops, churches, parks, and traditional native American cultural sites creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered; therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children.
19. Since state law does not consider medical marijuana an agricultural crop, there are no regulations governing the type or amounts of pesticides, fungicides, or rodenticides used in association with cultivation of medical marijuana. This poses a threat not only to the users of the marijuana, but to consumers of agricultural crops grown in proximity to the marijuana.
20. The unregulated use of pesticides, fungicides, rodenticides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water.
21. According to a study by researchers at the University of California at Davis and published in the journal PLoS ONE on July 13, 2012, the use of rodenticides in the cultivation of marijuana on resource lands has been linked to the poisoning and deaths of the Fisher, a forest carnivore that is a candidate for listing under the federal Endangered Species Act.
22. Pursuant to §303(d) of the Clean Water Act, the North Coast Regional Water Quality Control Board has identified several of Humboldt County's rivers as impaired due to elevated levels of sedimentation/siltation and temperature. The California Department of Fish & Wildlife believes that the cumulative effect of private water systems on stream flows to be substantial. Low in-stream flow leads to increased water temperature, disconnected pools, and degraded salmonid rearing habitat. Outdoor grown medical cannabis can demand as much as 6 gallons of water per plant per day, during the summer growing season.

23. The County finds that the potential land use impacts to the environment and to public health, safety and welfare as identified above, necessitates that the County create regulations to govern the indoor and outdoor cultivation of medical marijuana for personal use in the County of Humboldt.
24. The County finds that the indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, Therefore, the indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
25. The County finds that the indoor cultivation of fifty (50) square feet or less of medical marijuana that is ten (10) feet tall or less per residence or detached accessory building or the outdoor cultivation of canopy area of one hundred (100) square feet or less, on parcels up to one (1) acre in size, or canopy area of 200 square feet or less, on parcels greater than one (1) acre and up to five (5) acres in size, of medical marijuana per residence, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence or property for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.
26. The County further finds that the outdoor cultivation of medical marijuana within the unincorporated area of the County on parcels one (1) acre or less in size of more than 100 square feet of canopy area, or with the cultivation occurring within 20 feet of a property line, as well as the outdoor cultivation on parcels greater than one (1) acre and up to five (5) acres in size of more than 200 square feet of canopy area, or with the cultivation occurring within forty (40) feet of a property line, or within twenty (20) feet of a property line, where the neighboring parcel is five (5) acres or above in size, cannot be considered an accessory use of the property that is incidental and subordinate to the character of the setting, and will therefore result in an unreasonable risk of environmental and neighborhood degradation and threats to public safety, as well as nuisance odors.
27. The limited right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting the regulations contained in the Ordinance, the County anticipates a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of medical marijuana for personal use in the unincorporated areas of Humboldt County.