



COUNTY OF HUMBOLDT

AGENDA ITEM NO.  
**K-1**

For the meeting of: October 18, 2016

Date: September 26, 2016

To: Board of Supervisors

From: Clerk of the Board, Kathy Hayes *(Signature)*

Subject: Appeal of the Code Enforcement Officer's Determination to the Notice and Order to Abate Unlawful Marijuana Cultivation, served September 13, 2016 Property Owner: Roger Lechner: APN #109-071-012.

RECOMMENDATION(S): That the Board of Supervisors:

1. Open the public hearing and receive the staff report and public testimony,
2. Close the public hearing, and based on the findings in the Code Enforcement Officers Notice and Order (Attachment C), pursuant to 314-55.2.7.3 (outdoor cultivation on property without a permitted residence within the Shelter Cove Resort Improvement District) deny the appeal,
3. Direct the Clerk of the Board to issue a written decision in the form of a resolution (Attachment E), including the findings relating to the existence or nonexistence of the nuisance, as well as findings concerning the property and means of abatement of the nuisance conditions set forth in the Notice and Order, and
4. Direct the Clerk of the Board to give notice of the decision to the appellant, appellant's agent, Code Enforcement Officer, and any other interested party.

SOURCE OF FUNDING: N/A

DISCUSSION: Per Ordinance # 2523, (Attachment A) section 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 constitutes a public nuisance to the Board of Supervisors, or may show cause before the Board of Supervisors why those conditions should not be abated.

Prepared by Kathy Hayes *(Signature)* Signature *Easha H*  
 REVIEW: Auditor \_\_\_\_\_ County Counsel *BD* Personnel \_\_\_\_\_ Risk Manager \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing – 9:00 a.m.  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
 Upon motion of Supervisor Fennell Seconded by Supervisor Sundberg  
 Ayes Fennell, Sundberg, Bohn, Lovelace, Bass  
 Nays \_\_\_\_\_  
 Abstain \_\_\_\_\_  
 Absent \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: October 18, 2016  
 By: *BSE Eberhart*  
 Kathy Hayes, Clerk of the Board

On Friday, September 23, 2016, the Clerk of the Board's office received written notification (Attachment B) requesting an appeal of the Enforcing Officer's determination to the Notice and Order to Abate Unlawful Marijuana Cultivation; Property Owner, Roger Lechner; APN #109-071-012, to the Board of Supervisors.

Section 55.2.8.4.2. of Ordinance # 2523 allows upon timely receipt of a written request for a public hearing, the date of which is set by the Clerk of the Board for a date not less than seven (7) days or more than thirty (30) days from the date the request was filed. Notice was sent to the Appellant on September 26, 2016 (Attachment D).

FINANCIAL IMPACT: N/A

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS:

- Attachment A – Ordinance # 2523 Related to Outdoor Cultivation of Medical Marijuana
- Attachment B – Notice Requesting Appeal Hearing
- Attachment C – Notice and Order to Abate Unlawful Marijuana Cultivation in the Inland Zone
- Attachment D – Notification Letter to Appellant, Interested Parties and Code Enforcement Officer
- Attachment E – Resolution



Attachment A

**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 hoophouse 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 (CO<sub>2</sub>, 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 [ $2.5 \text{ feet}^2 \times 0.7854$ ].

*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 15<sup>th</sup> through November 1<sup>st</sup>.

**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 hoophouse 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 (CO<sub>2</sub>, 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 [ $2.5 \text{ feet}^2 \times 0.7854$ ].

*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 hoop house, 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 15<sup>th</sup> through November 1<sup>st</sup>.
- 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 28<sup>th</sup> 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



Attachment B

To:

Kathy Hayes, Clerk of the Humboldt County Board

of Supervisors

825 5th Street, Eureka Ca 95501 (Rm 1112)

707 476 2390 ext 1 / 707-445-7299 FAX

From

Roger Lechner, P.O. Box 122, Whitehorn Ca 95589

or 183 Martins Way Shelter Cove Ca 95587

Request for an Appeal

For the following reasons:

1. The exclusive code is not fair.

2. The way the exclusive code was adopted was

improper.

3. The way violations are cited & enforced is not fair & false in this instance.

4. Medical Necessity - Lowfull Medical Marijuana.

5. Other circumstances, conditions, & considerations

X Roger Lechner

September 22, 2016

183 Martins Way Shelter Cove Ca 95589

Phone: 707-496-6880





Attachment C

COUNTY OF HUMBOLDT  
NOTICE AND ORDER TO ABATE UNLAWFUL MARIJUANA CULTIVATION  
IN THE INLAND ZONE

Name of Property Owner(s): Roger Lechner

Property Occupant(s) (if known): \_\_\_\_\_

Property Situs: 183 Marten Way, Whitethorn (Shelter Cove), California; AP# 109-071-012

**Medical marijuana cultivation in violation of Humboldt County Code sections 314-55.2 et seq. exists on the above identified parcel(s).**

**Such cultivation is a nuisance per se subject to the expedited abatement procedures described in sections 314-55.2.8.**

Specifically, the outdoor cultivation of medical marijuana on the above-identified parcels is in violation of:

- 314-55.2.7.2.1 – Total plant canopy exceeding one hundred (100) square feet on a parcel one (1) acre or smaller.
- 314-55.2.7.2.1 - Cultivation of medical marijuana on a parcel one (1) acre or smaller occurring within twenty (20) feet of a property boundary line.
- 314-55.2.7.2.2 - Total plant canopy exceeding two hundred (200) square feet on a parcel between one (1) acre and five (5) acres in size.
- 314-55.2.7.2.2 - Cultivation of medical marijuana on a parcel between one (1) acre and five (5) acres in size occurring within twenty (20) feet of a property boundary line, when the neighboring parcel is five (5) acres or larger.
- 314-55.2.7.2.2 - Cultivation of medical marijuana on a parcel between one (1) acre and five (5) acres in size occurring within forty (40) feet of a property boundary line, when the neighboring parcel is less than five (5) acres in size.
- 314-55.2.7.2.3 – Cultivation occurring within 600 feet of any school, school bus stop, public park, place of religious worship, or traditional native American cultural site.
- 314-55.2.7.2.4 – Indoor cultivation occurring in addition to the outdoor cultivation.
- 314-55.2.7.2.5 – Cultivation of medical marijuana in more than one residence, detached accessory building or outdoor cultivation area within the jurisdiction of Humboldt County.



314-55.2.7.2.7 – Effluent, including but not limited to waste products, chemical fertilizers or pesticides 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 medical marijuana cultivation.

314-55.2.7.2.8 – Outdoor medical marijuana cultivation adversely affecting 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.

314-55.2.7.2.8 – Outdoor medical marijuana cultivation that is deemed hazardous due to the use or storage of materials, processes, products, or wastes associated with the cultivation.

314-55.2.7.2.9 – Private water system used in association with the outdoor cultivation of medical marijuana that is not in compliance with section 1602 of the Fish and Game Code and/or failure to notify the California Department of Fish and Wildlife of associated water diversions to determine if a Lake and Streambed Alternation Agreement is necessary.

314-55.2.7.3 – Outdoor cultivation on property without a permitted residence within the Shelter Cove Resort Improvement District.

314-55.2.7.3 – Outdoor cultivation by a qualified patient on property within the Shelter Cove Resort Improvement District where the permitted residence is not occupied by the property owner, or by a leaseholder or lawful occupant who furnishes the notarized consent of the property owner or their agent for the occupant to reside on the property and cultivate medical marijuana.

Action(s) required to abate the violation of the County Code:

Cease marijuana cultivation until a permitted residence is constructed.

The Property Owner and/or Occupant is required to abate the identified violations as described above within *fourteen (14) calendar days* after the date this notice is served. Please notify the County of your abatement efforts so that the County can confirm the abatement and dismiss this Notice and Order.

#### RIGHT TO APPEAL (314-55.2.8.4)

The Property Owner and/or Occupant may, within *ten (10) calendar days* after the date this notice is served make a request in writing to the Clerk of the Board of Supervisors for a hearing to appeal the determination that the conditions on the



property violate the above enumerated sections of the County Code or to show other cause why those conditions should not be abated. This written request for an appeal must include a statement of all facts supporting the appeal.

**LIABILITY FOR COSTS OF UNPAID ABATEMENT (314-55.2.8.5)**

If the Property Owner and/or Occupant fails to timely abate the above identified violation(s) or request an appeal hearing, the Enforcing Officer will abate the nuisance. If unpaid by the Property Owner and/or the Occupant, such costs of abatement, including administrative costs AND ATTORNEYS FEES, may be made a special assessment, added to the County's Assessment Roll and become a lien on the real property, or may be placed on the unsecured tax roll.

Date: September 13, 2016

  
\_\_\_\_\_  
Enforcing Officer



|  |   |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br><b>CODE ENFORCEMENT UNIT</b><br>COUNTY OF HUMBOLDT<br>825 FIFTH STREET, ROOM 110<br>EUREKA, CA 95501<br>TELEPHONE NO.: (707) 476-2429      FAX NO. (Optional): (707) 445-6297<br>E-MAIL ADDRESS (Optional):<br>ATTORNEY FOR (Name): | FOR COURT USE ONLY                        |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:  |   |
| PLAINTIFF/PETITIONER: <b>CODE ENFORCEMENT UNIT</b><br><br>DEFENDANT/RESPONDENT: <b>ROGER LECHNER</b>   | CASE NUMBER:                              |
| <b>PROOF OF SERVICE OF SUMMONS</b>   | Ref. No. or File No.:<br><b>16CEJ-103</b> |

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  Alternative Dispute Resolution (ADR) package
  - d.  Civil Case Cover Sheet (served in complex cases only)
  - e.  cross-complaint
  - f.  other (specify documents): **NOTICE & ORDER TO ABATE UNLAWFUL CULTIVATION OF MARIJUANA IN THE INLAND ZONE**
3.
  - a. Party served (specify name of party as shown on documents served):  
**ROGER LECHNER**
  - b. Person served:  party in item 3a       other (specify name and relationship to the party named in item 3a):
4. Address where the party was served:  
**183 MARTEN WAY, WHITETHORN**
5. I served the party (check proper box)
  - a.  by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): \_\_\_\_\_ (2) at (time): \_\_\_\_\_
  - b.  by substituted service. On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b): \_\_\_\_\_
  - (1)  (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
  - (2)  (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
  - (3)  (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
  - (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or  a declaration of mailing is attached.
  - (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.



|   |              |
|---|--------------|
| PLAINTIFF/PETITIONER: CODE ENFORCEMENT UNIT | CASE NUMBER: |
| DEFENDANT/RESPONDENT: ROGER LECHNER         |              |

- c.  by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3)  with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d.  by other means (specify means of service and authorizing code section):
- POSTED PROPERTY w/ 2 COPIES, 9/13/2016 1515 HOURS

Additional page describing service is attached.

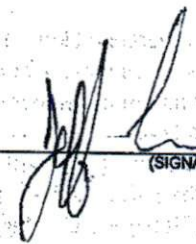
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (specify):
- c.  as occupant.
- d.  On behalf of (specify):
- under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers
- a. Name: Jeff Conner
- b. Address: 825 Fifth Street
- c. Telephone number: 476-2429
- d. The fee for service was: \$ 0.00
- e. I am:
- (1)  not a registered California process server.
- (2)  exempt from registration under Business and Professions Code section 22350(b).
- (3)  registered California process server:
- (i)  owner  employee  independent contractor.
- (ii) Registration No.:
- (iii) County:

8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 9/14/2016

Jeff Conner  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)



Attachment 1



BOARD OF SUPERVISORS  
**COUNTY OF HUMBOLDT**

825 5<sup>TH</sup> STREET  
EUREKA, CALIFORNIA 95501-1153    PHONE (707) 476-2390    FAX (707) 445-7299

September 26, 2016

Roger Lechner  
P.O.Box 122  
Whitethorn, CA 95589

Re: Appeal Hearing for Roger Lechner - APN 109-071-12

Dear Mr. Lechner:

Our office received your request dated September 23, 2016 for a hearing to appeal the determination of the Code Enforcement Officer's Corrected Notice and Order to Abate Unlawful Marijuana Cultivation in the Inland zone.

Per Section 55.2.8.4.2 of Ordinance #2523 (related to the outdoor cultivation of medical marijuana for personal use on parcels five acres or less in size), I am writing to inform you that the Clerk of the Board's office has scheduled the requested appeal hearing for Tuesday, October 18, 2016 at 9:00 a.m. or as soon thereafter as the hearing can be heard, in the Board of Supervisors Chambers (1<sup>st</sup> Floor) located at 825 5<sup>th</sup> Street, Eureka, CA 95501.

In addition, per section 55.2.8.4.2, I have also forwarded a written copy of this letter to the Code Enforcement Officer (Jeff Conner) as official notification of the above scheduled hearing.

Sincerely,

Kathy Hayes, Clerk of the Board  
County of Humboldt

/kh



**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings, Meeting of October 18, 2016

RESOLUTION NO. 16-123

**RESOLUTION TO UPHOLD THE CODE ENFORCEMENT OFFICER'S DETERMINATION TO THE NOTICE AND ORDER TO ABATE UNLAWFUL MARIJUANA CULTIVATION; PROPERTY OWNER: ROGER LECHNER**

**WHEREAS**, on September 13, 2016 property owner, Roger Lechner (APN # #109-071-012) located at 183 Martins Way, Shelter Cove, CA 95589) was served a County of Humboldt Notice and Order to Abate Unlawful Marijuana Cultivation in the Inland Zone, pursuant to Humboldt County Code, sections 314-55.2, on the above identified parcel(s); and

**WHEREAS**, outdoor cultivation on property without a permitted residence within the Shelter Cove Resort Improvement District is a nuisance and subject to the expedited abatement procedures described in sections 314-55.2.8 of the Humboldt County Code; and

**WHEREAS**, per Humboldt County Code, Section 313-55.2.8.4.1 and 313-55.2.8.4.2, any person upon whom a Notice and Order to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the Enforcing Officer to the Board of Supervisors upon timely receipt of a written request. The written request must be received by the Clerk of the Board's office within ten (10) calendar days after the date that said Notice and Order was served; and

**WHEREAS**, on September 23, 2016, the Clerk of the Board's office received a written request to appeal the Code Enforcement Officer's Determination on the above Notice and Order to Abate; and

**WHEREAS**, the Clerk of the Board set the hearing date for October 18, 2016 in accordance with section 313-55.2.8.4.2 that a hearing be set for a date not less than seven (7) days or more than thirty (30) days from the date the request was filed; and

**WHEREAS**, the Board of Supervisors held a public hearing on October 18, 2016 and considered the issues raised in the appeal, the submitted evidence and testimony, and staff recommendations.

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Humboldt County Board of Supervisors:

1. That the appeal has been denied and the Notice and Order to abate is in effect and must be complied with within fourteen (14) days from the date of this hearing; and
2. That the action required to abate the violation of the County Code is to cease cultivation of marijuana until a permitted residence is constructed; and



**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings, Meeting of October 18, 2016

RESOLUTION NO. 16-123

3. That if the property owner and/or occupant fails to timely abate the above identified violation(s) the Code Enforcement Officer will abate the nuisance. If unpaid by the property owner and/or occupant, such costs of abatement, including administrative costs and attorney's fees, may be made a special assessment, added to the County's Assessment Roll and become a lien on the real property, or may be placed on the unsecured tax roll; and
4. That the Appellant and/or Property Owner/Occupant notify the Code Enforcement Officer of abatement efforts so that the County can confirm the abatement and dismiss the Notice and Order.

Dated: October 18, 2016



MARK LOVELACE, Chair  
Humboldt County Board of Supervisors

Adopted on motion by Supervisor Fennell, seconded by Supervisor Sundberg, and the following vote:

|          |             |   |
|----------|-------------|---|
| AYES:    | Supervisors | Sundberg, Fennell, Lovelace, Bohn, Bass |
| NAYS:    | Supervisors | --                                      |
| ABSENT:  | Supervisors | --                                      |
| ABSTAIN: | Supervisors | --                                      |

STATE OF CALIFORNIA )  
County of Humboldt )

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be an original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.



By BROOKE EBERHARDT  
Deputy Clerk of the Board of Supervisors of the  
County of Humboldt, State of California