ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 9.31 OF TITLE 9 OF THE MENDOCINO COUNTY CODE ENTITLED "MEDICAL MARIJUANA CULTIVATION REGULATION"

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

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

"MEDICAL MARIJUANA CULTIVATION REGULATION

Section 9. 31.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino by balancing: (1) the needs of medical patients and their caregivers for enhanced access to medical marijuana; (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts; and (3) the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein; (2) allow the use or diversion of marijuana for nonmedical purposes; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California State law.

Section 9.31.020 Findings.

(A) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996").

(B) The intent of Proposition 215 was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not thereby subject to criminal prosecution or sanction. The Act further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."

(C) The State enacted SB 420 in 2004 (codified as Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act of 1996, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the Act, and enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation

projects and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.

(D) Marijuana plants, whether grown indoors or outdoors, especially as they mature prior to harvest, may produce a distinctive odor that may be detectable far beyond property boundaries.

(E) Each year since 2004, the Mendocino County Air Quality Management District has received a significant number of formal complaints of odor related to the cultivation of marijuana in residential neighborhoods.

(F) Marijuana, whether grown for medicinal purposes, or diverted to the black market, may be sold for thousands of dollars per pound.

(G) The strong smell of marijuana may create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery.

(H) There have been several marijuana related incidents of burglary, robbery and armed robbery, some including acts of violence resulting in injury or death.

(I) Marijuana that is grown indoors may require excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, improper maintenance of the generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may create an unreasonable risk of fire and pollution.

(J) The right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By permitting no more than twenty-five (25) marijuana plants on any one (1) legal parcel, the County anticipates a significant reduction in the complaints of odor and the risks of fire, crime and pollution described herein.

(K) The County finds that the indoor or outdoor cultivation of more than twenty-five (25) marijuana plants on any one (1) legal parcel within the unincorporated area of the County for medicinal purposes will likely result in an unreasonable risk of crime and will likely create odors offensive to persons living nearby notwithstanding the limitations on cultivation that are imposed within this Chapter. The County further finds that the indoor cultivation of more than twenty-five (25) marijuana plants on any one (1) legal parcel may create an unreasonable risk of fire and/or pollution.

(L) The County further finds that qualified patients and primary caregivers, either as individuals or who operate or are members of collectives and cooperatives as defined herein may be granted an exemption to cultivate medical marijuana in excess of twenty-five (25) plants per parcel, provided they apply for, obtain, and operate in compliance with a permit, as provided for herein, that is conditioned to limit environmental, neighborhood, and community impacts.

Section 9.31.030 Definitions.

As used herein the following definitions shall apply:

"Applicant" means a person(s) who applies for an exemption to the twenty-five (25) plant per parcel limitation as specified under 9.31.110.

"Attorney General's Guidelines" means Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the Attorney General in August 2008.

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

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

"Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

"Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Mendocino, that has a complete roof enclosure 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. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" means a parcel of land for which one (1) legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this Chapter.

"Medical Marijuana Collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate, store, and/or dispense marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

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

"Parcel" means a "legal parcel" as defined herein.

"Permittee" means an individual or collective to whom an exemption permit is issued as set forth in Section 9.31.110.

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

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

"Residential Treatment Facility" means a facility providing for treatment of drug and alcohol dependency.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

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

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

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

Section 9.31.040 Cultivation of Marijuana.

(A) It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within any unincorporated area of the County to cause or allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed within Section 9.31.050.

(B) The indoor cultivation of marijuana plants shall be limited to no more than one hundred (100) contiguous square feet per legal parcel.

(C) The indoor or outdoor cultivation of marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to objectionable odors.

(D) The use of light assistance for the outdoor cultivation of marijuana shall not exceed a maximum of six hundred (600) watts of lighting capacity per one hundred (100) square feet of growing area.

(E) All lights used for the cultivation of marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.

(F) The indoor or outdoor cultivation of marijuana shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.

(G) Nothing in this Section shall be construed as a limitation on the County's authority to abate any violation which may exist from the cultivation of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

Section 9.31.050 Cultivation of More Than Twenty-Five (25) Marijuana Plants, Indoors or Outdoors, on One (1) Legal Parcel is Prohibited.

The cultivation of more than twenty-five (25) marijuana plants on one (1) legal parcel, either indoors or outdoors, within the unincorporated area of the County, regardless of whether the person(s) growing the marijuana is/are a "qualified patient", "primary caregiver", or "collective", is hereby prohibited except as set forth in Section 9.31.110.

Section 9.31.060 "Zip-Tie" Provision.

(A) For the convenience of the property owner and to assist in the enforcement of this Ordinance, and to avoid unnecessary confiscation and destruction of medicinal marijuana plants, marijuana grown for medicinal purposes in unincorporated Mendocino County may have "zip-ties" issued by the Mendocino County Sheriff's Department. For proper identification, such "zip-ties" should be securely attached to the base of individual flowering marijuana plants.

(B) "Zip-Ties" can be obtained through the Mendocino County Sheriff's Department. All applicants for "zip-ties" must present a State-issued medical marijuana identification card or a valid medical recommendation. The fee for the "zip-ties" shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the Master Fee Policy. Any zip-tie fees may be discounted by fifty percent (50%) for Medi-Cal, SSI, and CMSP recipients, and equivalent income-qualified veterans.

Section 9.31.070 Limitation on Number of Plants.

(A) The cultivation of more than twenty-five (25) marijuana plants on any legal parcel, whether grown collectively or individually, either indoors or outdoors, within the unincorporated area of the County is prohibited unless cultivated by individuals, collectives or members thereof who apply for, obtain, and are in compliance with a permit for an exemption as set forth in Section 9.31.110. This limitation shall be imposed regardless of the number of qualified patients residing at such location. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana is/are the caregiver(s) for

qualified patients, or that they are members of a medical marijuana collective except as set forth in Section 9.31.110.

(B) Wherever medical marijuana is grown, a copy of a current and valid, State-issued medical marijuana identification card or physician recommendation must be displayed in such a manner as to allow law enforcement officers to easily see the card without having to enter any building of any type except as set forth in Section 9.31.110.

Section 9.31.080 Notice to Legal Owner of Legal Parcel Where Marijuana is Grown.

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

Section 9.31.090 Limitation on Location to Cultivate Marijuana.

(A) The cultivation of marijuana, whether grown collectively or individually, in any amount or quantity, shall not be allowed in the following areas:

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

(2) Outdoors within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel.

(3) Outdoors in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.

(4) In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.

(B) The distance between the above-listed uses in Section (A) (1) and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in Section 9.31.100, or if the marijuana is cultivated indoors, from the nearest exterior wall of the building in which the marijuana is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in Sections (A) (2) and (A) (3) to any residential structure shall be measured from the fence required in Section 9.31.100 to the nearest exterior wall of the residential structure.

Section 9.31.100 Fencing Requirement for All Outdoor Cultivation.

All marijuana grown outside of any building must be fully enclosed by a secure fence at least six (6) feet in height. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate

area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

Section 9.31.110 Requirements for Exemption from the Twenty-five (25) Plants Per Parcel Limitation.

(A) Medical marijuana growing collectives, individual members thereof, or individual patients who possess a valid doctor's recommendation stating that more than twenty-five (25) plants is necessary to meet the medical needs of the patient may be granted an exemption from the limitations set forth in Section 9.31.070 provided they apply for and obtain a permit from the Mendocino County Sheriff's Office. Any legal parcel for which an exemption is sought shall be a minimum of five (5) acres in size and under no circumstances shall the permitted amount exceed ninety-nine (99) plants per legal parcel. A separate permit application shall be required for each parcel for which permission to exceed the twenty-five (25) plants per parcel limitation is sought. All permits shall be site specific and once issued shall not be transferred or sold. All permits that have been issued are subject to annual renewal.

(B) The permit procedure shall include an application, which shall set forth, under penalty of perjury, all of the following:

(1) The name and address of each person applying for the permit and any other person who will be engaged in the management of the collective;

(2) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in the management of the collective;

(3) Written evidence that each person applying for the permit and any other person who will be engaged in the management of the collective is at least eighteen (18) years of age;

(4) That the applicant or any individual engaged in the management of, or employed by, the collective has not been convicted of a violent felony as defined in Penal Code Section 667.5 (c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code Section 667.5 (c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

(5) A statement acknowledging that the permit applied for will be issued in conformance with the laws of the State of California and that such issuance does not confer upon the applicant, managers, employees and members of the collective immunity from prosecution under federal law;

(6) The applicant's waiver and release of the County from any and all legal liability related to or arising from the application for a permit or the enforcement of the conditions of the permit;

(7) The location of the parcel where the cultivation of medical marijuana will occur;

(8) The number of plants for which an exemption is sought and the measures that will be taken to minimize odor-related complaints, or a statement explaining why such measures are not necessary;

(9) Proof that the owner of the property, if other than the applicant, has been notified as set forth in Section 9.31.080;

(10) A statement that the requested use will not violate the limitation locations set forth in Section 9.31.090;

(11) A statement that the requested use will not violate the fencing requirements set forth in Section 9.31.100;

(12) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft;

(13) A statement describing the proposed source of power for indoor and/or outdoor cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site. This statement shall be referred to the Department of Building and Planning and may be referred to the appropriate Fire District for a determination if additional conditions, permits or inspections shall be required;

(14) If diesel generators are proposed to be used on site, a detailed description of the proposed methods of storage, delivery and containment of the diesel fuel must be included. This statement shall be referred to the Department of Environmental Health and the Air Quality Management District for a determination if additional conditions, permits or inspections shall be required;

(15) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or Partnership Agreement shall be attached to the application;

(16) The applicant shall provide proof of either, a physician recommendation that the amount to be cultivated is consistent with the

applicant's medical needs, the needs of the patients for whom the applicant is a caregiver, or a written agreement or agreements, that the applicant is authorized by one or more medical marijuana dispensing collectives to produce medical marijuana for the use of the members of said collective or collectives;

(17) A statement that the requested use will not utilize water that has been or is illegally diverted from any stream, creek, or river;

(18) A statement describing the measures that will be taken to prevent erosion or contaminated runoff into any stream, creek or river, or an explanation of why such measures are not necessary;

(19) Submission of payment of a permit fee sufficient to cover the cost to all County departments of investigating and processing the application in an amount that shall be set by the Board of Supervisors in accordance with all applicable laws and regulations;

(20) That upon receiving a completed permit application for an exemption from the twenty-five (25) plants per legal parcel limitation, the Sheriff shall refer the application to the Department of Planning and Building for a determination of the zoning, parcel size, surrounding uses and other relevant information;

(21) That the Sheriff is hereby authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application;

(22) Authorization for the Sheriff, Fire District, and/or other appropriate County employees or agents or their designees, including building and fire inspectors, to enter the property only during normal business hours for the purpose of examining the location to confirm compliance with this Section.

(C) No permit shall be issued if the Sheriff finds:

(1) That the applicant has provided materially false documents or testimony; or

(2) That the applicant has not complied fully with the provisions of this Chapter; or

(3) That the operation as proposed by the applicant, if permitted, would not have complied with all applicable laws, including, but not limited to, the Building, Planning, Housing, Fire, and Health Codes of the County, including the provisions of this Chapter and regulations issued by the Sheriff pursuant to this Chapter.

(D) All permits shall be issued within ten (10) business days from completion of inspection by the Sheriff as set forth herein, or from receipt of report if inspected by a third party inspector as defined herein.

(E) Medical marijuana collectives and individual permittees shall comply with all of the following:

(1) Operate on a non-profit basis as set forth in Section B.1. of the Attorney General's Guidelines;

(2) Apply for and obtain a County business license from the office of the Treasurer-Tax Collector;

(3) Apply for and obtain a Board of Equalization Seller's Permit and collect and remit sales tax to the Board of Equalization if they intend to sell directly to qualified patients or primary caregivers;

(4) Employ only persons who are at least eighteen (18) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance, state workers' compensation and liability laws;

(5) Follow the membership and verification guidelines as set forth in Section B.3. of the Attorney General's Guidelines, except that wherever "should" appears it shall be replaced with "shall";

(6) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this Section;

(7) Prohibit sales to non-members as set forth in Section B.5. of the Attorney General's Guidelines;

(8) Allow reimbursements and allocations of medical marijuana as set forth in Section B.6. of the Attorney General's Guidelines;

(9) Possess marijuana only in amounts consistent with the medical needs of the members of the collective; and only cultivate marijuana consistent with the limits of the exemption granted pursuant to a permit issued in conformance with this Section, but in no case more than ninety-nine (99) plants per parcel;

(10) Indoor marijuana cultivation shall be limited to a single indoor growing area that shall not exceed one hundred (100) contiguous square feet per legal parcel;

(11) Secure all buildings where marijuana is cultivated or stored, sufficient to prevent unauthorized entry;

(12) Purchase and attach a zip-tie to any flowering marijuana plant that is grown in compliance with a permit that has been issued pursuant to a request for exemption.

(13) In lieu of the requirements of Section 9.31.070 (B), display copies of the permit issued pursuant to this Section, in a conspicuous place at the entrance to each garden area and immediately inside the entrance to any building where medical marijuana is cultivated, processed, or stored;

(14) Cultivated marijuana plants shall not be visible from the public right of way, or from publicly traveled private roads;

(15) Exterior signage shall consist only of the site address;

(16) Traffic to the site shall be limited to employees and/or members who are essential to the cultivation of medical marijuana;

(17) Designate the premises where cultivation occurs as the point of sale for all transactions subject to the state sales tax;

(18) All weighing and measuring devices shall be inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.

(F) As an alternative to the on site inspection by the Sheriff called for in Section 9.31.110 (B) (22) of this Ordinance, the Permittee may, at their expense, select a qualified third party inspector from a list that shall be established and maintained by the Sheriff and who shall be authorized to conduct said inspection. Nothing herein shall limit the ability of Fire District or other appropriate County employees or agents from entering the property to conduct the inspections authorized by this Ordinance or the ability of the Sheriff to make independent compliance checks. The Sheriff shall determine the criteria for establishing the list of third party inspectors and may request any information specified in Section 9.31.110 (B) of this Ordinance or any other information the Sheriff deems reasonably related to verification of the qualifications of the third party inspector. The third party inspector shall submit a detailed written report to the Sheriff regarding each of the items inspected/verified, including recommendations for improvements to the operation.

(G) The third party inspector, as authorized by the Sheriff, shall inspect and verify all of the following:

1. The identity of the person(s) assisting in the inspection and their relationship to the applicant/collective.

2. That the address and/or location of the parcel conforms to that specified in the application.

3. That exterior signage is limited to the address of the location.

4. The precise location(s) where the marijuana is to be cultivated, processed and/or stored.

5. The location, if any, where marijuana is to be grown indoors, that it not exceed a single space of not more than one hundred (100) contiguous square feet, the source of power, the number and wattage of lights, and any indicia of substandard electrical conditions.

6. That marijuana cultivated on the site will not violate the limitation locations set forth in Section 9.31.090.

7. That marijuana cultivated on the site will not violate the fencing requirements set forth in Section 9.31.100.

8. That marijuana cultivated on site will not violate the prohibition on objectionable odors set forth in Section 9.31.040 (C).

9. That marijuana cultivated on site will not violate the lighting requirements and limitations set forth in Sections 9.31.040 (D) and (E).

10. That the security measures for the site are sufficient to ensure the safety of members and employees and protect the premises from theft.

11. That all buildings where marijuana is cultivated or stored are secured sufficiently to prevent unauthorized entry.

12. The source of power for indoor and/or outdoor cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site;

13. That the diesel generators, fuel and waste oil, if any, to be used on site are stored, delivered and contained as specified in the application.

14. That the site does not utilize water that has been or is illegally diverted from any stream, creek or river.

15. That appropriate measures have been taken to prevent erosion or contaminated runoff into any stream, creek or river.

16. That upon any subsequent inspection copies of the permit are displayed in conformance with Section 9.31.110 (D) (16).

17. That zip-ties are properly attached to any flowering marijuana plant grown in compliance with the permit specified in this Section.

18. That a valid County business license has been obtained from the office of the Treasurer-Tax Collector.

19. That a Board of Equalization Seller's Permit has been obtained if the permittee intends to sell directly to qualified patients or primary caregivers.

20. That the applicant has sufficient collective membership, or is a member of and has an agreement with one or more dispensing collectives sufficient to account for the total amount of marijuana produced or estimated to be produced pursuant to a permit issued in conformance with this Section.

21. That the applicant has established procedures and systems sufficient to do all of the following:

    (a) comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or deductions for unemployment insurance, state workers' compensation and liability laws;
    (b) comply with the membership and verification guidelines as set forth in Section B.3. of the Attorney General's Guidelines;
    (c) maintain records of the signed membership applications of all members;
    (d) maintain records of the total amount of marijuana produced;
    (e) track and report all sales subject to sales tax;
    (f) prevent sales or diversion to non-members as set forth in Section B.5. of the Attorney General's Guidelines;
    (g) allow reimbursements and allocations of medical marijuana as set forth in Section B.6. of the Attorney General's Guidelines.

Section 9.31.120 Appeal from Denial of Permit or Renewal.

The Sheriff's Office shall review all permit and renewal applications, and all other relevant information, and determine, based on current information, if the permit should be granted or renewed. If the Sheriff's Office determines that the permit should not be granted or renewed, the reasons for such denial shall be in writing. The applicant shall then have fourteen (14) business days to correct the reasons for denial and request a re-inspection of the property. The cost of any re-inspection shall be borne by the applicant. The applicant may appeal such decision by filing a written notice with the Clerk of the Board of Supervisors within ten (10) days stating the grounds for the appeal. Such notice of appeal shall be accompanied by the payment of an appeal fee which shall be set by resolution of the Board of Supervisors in accordance with all applicable laws, regulations and the Master Fee Policy. If a notice of appeal is not filed and the required fee paid within the ten (10) day appeal period, the decision of the Sheriff's Office shall be final.

Section 9.31.130 Public Nuisance.

A violation of any provision of this Ordinance shall be deemed to be a public nuisance and subject to the enforcement process as set forth in Sections 9.31.140 through 9.31.300 of this Chapter.

Section 9.31.140 Enforcement.

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

(B) The County may also abate the violation of this Chapter through the abatement process established by Government Code Section 25845 as set forth in Sections 9.31.150 through 9.31.300 beginning with the service of a Notice and Order to Abate.

Section 9.31.150 Service of Notice and Order to Abate.

The Notice and Order to Abate shall be served by the Enforcement Officer in the following manner:

(A) By certified mail, addressed to the owner, his or her agent, at the address shown on the last equalized assessment roll or as otherwise known. Service shall be deemed to have been completed upon the deposit of said Notice and Order, postage prepaid, in the United States mail; **and**

(B) By certified mail, addressed to anyone known to the Enforcement Officer to be in possession of the property at the street address of the property being possessed. Service shall be deemed to have been completed upon the deposit of said Notice and Order, postage prepaid, in the United States mail; **and**

(C) By posting such Notice and Order to Abate conspicuously in front of the property on which, or in front of which, the nuisance exists, or if the property has no frontage upon any street, highway, or road, then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property.

Section 9.31.160 Administrative Civil Penalties.

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

1. No less than twenty-five dollars ($25.00) per day and no more than one hundred dollars ($100.00) per day for the first violation; no less than one hundred dollars ($100.00) per day and no more than two hundred dollars ($200.00) per day for a second violation of this Chapter within one (1) year; and no less than two hundred dollars ($200.00) per day and no more than five hundred dollars ($500.00) per day for each additional

violation of this Chapter within one (1) year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.

2. The Enforcement Officer shall have the sole and exclusive discretion to set the amount of civil penalties within the ranges set forth in this Section. The Enforcement Officer shall not impose a penalty greater than the minimum amount in range of civil penalties set forth in this Section, unless the Enforcement Officer's department has established a written policy setting forth how civil penalties within the ranges are determined. Such policy shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of penalty to be imposed by this Section.

3. If the penalty is imposed for violation of this Ordinance there shall be imposed a fine of $250.00, plus the actual costs of abatement.

4. At the discretion of the Enforcement Officer, or his or her designee, or upon the appeal of the property owner, the determination may be referred to a Hearing Officer of the County, duly appointed to hear such matters as described in Sections 9.31.170, 9.31.180 and 9.31.190. The determination of the Hearing Officer as to the amount of charges properly imposed under this Section shall be final, subject only to judicial review.

5. The charges imposed by this Section shall not apply if the property owner establishes all of the following: (i) that, at the time he or she acquired the property, a violation of this code already existed on the property; (ii) the property owner did not have actual or constructive notice of the existence of that violation; and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the Enforcement Officer, to meet the requirements of this code.

6. In the event a property owner, in the opinion of the relevant Department Head(s), abates the nuisance in a timely manner after the Notice and Order to Abate has been issued, the relevant Department Head(s) has (have) the authority to waive or reduce the amount of penalties owed, if in his or her opinion such a reduction is warranted.

Section 9.31.170 Hearing Officer.

Pursuant to Government Code Section 25845(i), the Chief Executive Officer shall contract with at least three (3) individuals as defined in Government Code Section 27720 et seq. to act as Hearing Officers on a rotating basis for the

appeals described in this Chapter. The Hearing Officer shall have all powers and authorities described in Government Code Section 25845. In lieu of a Hearing Officer, the Board of Supervisors at any time may exercise the option to appoint a Hearing Board which shall consist of three persons, appointed by the Board of Supervisors, who shall receive compensation for attendance at hearings at a rate fixed by the Board of Supervisors. A quorum for the Hearing Board to meet shall be two members. Concurrence of two members shall be required for decisions of the Hearing Board.

Section 9.31.180 Appeal Procedure.

Any owner or other person in possession of the property may appeal a Notice and Order to Abate to a person designated as a Hearing Officer or Hearing Board. The appeal shall be submitted in writing, specify the grounds upon which the appeal is taken, contain the name, address and telephone number of the appellant, be accompanied by the payment of an appeal fee in an amount established by Resolution by the Board of Supervisors and be filed with the Department specified on the Notice and Order to Abate within ten (10) calendar days of the issuance of the Notice and Order to Abate. Timely appeal shall stay any further abatement action until the hearing is conducted. In accordance with the noticing provisions set forth in Section 9.31.150, the Hearing Officer shall notify the parties in writing of the date and location of the hearing, at least ten (10) days prior to said date.

Section 9.31.190 Hearing Procedures.

(A) Pursuant to Government Code Section 25170, the Hearing Officer or Hearing Board may issue subpoenas as necessary to require the attendance at the hearing of persons or the production of books, papers or other things related to the subject matter of the hearing.

(B) The Enforcement Officer with jurisdiction to cause the abatement of the alleged nuisance shall first describe the acts or conditions constituting a nuisance and shall respond specifically to the grounds set out in the demand for hearing. Thereafter, the objector shall present whatever evidence is relevant to refute the allegation.

(C) Formal rules of evidence or procedure in any proceeding subject to this Chapter shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Any failure to make a timely objection to offered evidence constitutes a waiver of the objection.

(D) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified an interpreter by either the State of California or the County of Mendocino.

(E) Hearings shall take place at the earliest practical date following the notice of appeal. The failure of the appellant to appear shall not prevent the hearing from proceeding providing proper notice has been given in

accordance with this Chapter. The hearing may only be continued upon request of a party to the hearing and upon a showing of good cause but in no event shall there be more than one continuance allowed.

Section 9.31.200 Determination.

(A) At the conclusion of the hearing, the Hearing Officer or Hearing Board shall determine, based on the evidence before it:

1. Whether the acts or conditions specified in the Notice of Abatement exist;
2. Whether those acts or conditions constitute a nuisance;
3. If a nuisance is determined to exist, whether it should be abated by the County; and
4. The appropriateness of the penalty imposed.

(B) If the Hearing Officer or Hearing Board finds that the alleged nuisance does exist and should be abated, abatement of the nuisance shall be ordered. An Order of Abatement is final immediately, unless the Order or a provision of this Code expressly provides otherwise.

Section 9.31.210 Abatement by Owner or County.

(A) A copy of the written decision and Order of Abatement shall be served personally or by mail upon each objector and all other persons upon whom the Notice and Order to Abate was served. The Order may direct that any occupancy, use or activity cease immediately if its existence or continuation is found to be an immediate threat to health or safety. Otherwise, abatement shall be commenced by the owner within five (5) calendar days of the service of the decision and Order, or any longer period provided in the Order, and shall continue with reasonable diligence until complete. Reasonable diligence shall be determined by the Enforcement Officer.

(B) Upon the failure, neglect, or refusal to properly comply with the Order of Abatement issued by the Hearing Officer or Hearing Board within the prescribed time period, the Enforcement Officer authorized to enforce the Ordinance or other designated County employee may cause to be done whatever work is necessary to abate the public nuisance. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.

(C) When the County has completed the work of abatement, or has paid for such work, the actual cost thereof, together with an administrative cost, including reasonable attorneys' fees as set forth in Section 9.31.300 and all fines shall be charged to the owner of the property. The combined amounts shall be included in a bill and sent by mail to the owner, or his or her agent, for payment, if not paid prior thereto. The bill shall apprise the owner that failure to pay the bill within fifteen (15) days from the date of mailing, may result in a lien upon the property.

Section 9.31.220 Failure of Owner to Abate or Appeal.

If, within ninety (90) days from the issuance of the Notice and Order to Abate, the property owner has not filed a timely appeal in accordance with Section 9.31.150, or has failed to pay any outstanding fines or penalties, the amount of the penalties as established pursuant to Section 9.31.160 for the 90-day period shall be totaled and the same shall be considered due and owing. Notice of the amount of penalties shall be mailed to the property owner by certified mail, addressed to the owner, his or her agent, at the address shown on the last equalized assessment roll or as otherwise known. Any continuing violation after the aforesaid 90-day period shall be considered a subsequent offense and the penalty for such new violation shall be the basis for a second or third violation and the procedures set forth in this Chapter shall be followed as if the violation was a new violation. Nothing in this Section shall be interpreted to extend the time given to the property owner to abate the nuisance as set forth in the Notice and Order to Abate. Nothing in this Section shall be interpreted as limiting the Enforcement Officer's discretion to abate the nuisance at the County's expense and to seek reimbursement from the property owner or responsible party for all costs associated with the abatement.

Section 9.31.230 Summary Abatement.

Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections 9.31.160 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the County to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 9.31.150 but the formal notice and hearing procedures set forth in this Chapter shall not apply. No summary abatement shall occur prior to consultation with the Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 9.31.220 and 9.31.300.

Section 9.31.240 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Mendocino any duty to issue a Notice to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

Section 9.31.250 Report and Notice of Lien Hearing.

The Board of Supervisors delegates the responsibility to conduct a lien hearing in conformance with this Chapter to a Hearing Officer.

If the bill for the cost of the abatement, administrative costs, attorney fees, and all fines imposed pursuant to Section 9.31.160 or Section 9.31.220 and Section 9.31.300 are not paid within thirty (30) days of issuance of an order pursuant to Section 9.31.200 or the date of mailing of the notice described in Section 9.31.150, the Enforcement Officer authorized to enforce the Ordinance shall render an itemized report in writing to the Clerk of the Board for submittal to the Hearing Officer listing the costs of abatement, administrative fee, attorney fees and all fines and/or fees. The Hearing Officer may then order for a lien hearing and confirmation. Names and addresses of persons having any record interest in the property shall be attached to the report. At least ten (10) days prior to said hearing, the Hearing Officer through the Clerk of the Board shall give notice, by certified mail, of said hearing to the record owner of each assessor's parcel involved in the abatement, the holder of any mortgage or deed or trust of record, if known, and any other person known to have a legal interest in the property. Said notice shall describe the property by street number or some other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien.

Section 9.31.260 Hearing on Account and Proposed Lien.

At the time and place fixed in the notice, the Hearing Officer will hear and consider the account and proposed lien amount, together with objections and protests thereto. At the conclusion of the hearing, the Hearing Officer may make such modifications and revisions of the proposed account and lien amount as the Hearing Officer deems just, and may order the account and proposed lien amount confirmed or denied, in whole or in part, or as modified and revised. The determination of the Hearing Officer as to all matters contained therein is final and conclusive.

Section 9.31.270 Notice of Lien.

Upon confirmation of a lien by the Hearing Officer, the Enforcement Officer shall notify the owners by certified mail, return receipt requested, of the amount of the pending lien confirmed by the Hearing Officer and advise them that they may pay the account in full within thirty (30) days to the Enforcement Officer in order to avoid the lien being recorded against the property. If the lien amount is not paid by the date stated in the letter, the Enforcement Officer shall prepare and have recorded in the office of the County Recorder of Mendocino County a notice of lien. The notice shall contain:

(A) A legal description, address and/or other description sufficient to identify the premises;

(B) A description of the proceeding under which the lien was made, including the order of the Hearing Officer confirming the lien;

(C) The amount of the lien;

(D) A claim of lien upon the described premises.

Section 9.31.280 Lien.

Upon the recordation of a Notice of Lien, the amount claimed shall constitute lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at parity with the liens of State and County taxes.

Section 9.31.290 Collection with Ordinary Taxes.

After recordation, the Notice of Lien shall be delivered to the County Auditor, who will enter the amount of the lien on the assessment roll as a lien. Thereafter, the amount set forth shall be collected at the same time and in the same manner as ordinary County taxes, and is subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as are provided for ordinary County taxes; all laws applicable to the levy, collection and enforcement of County taxes are hereby made applicable to such lien.

Section 9.31.300 Attorneys' Fees.

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this Section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Chapter exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Section 9.31.310 Use of Money Collected Under This Chapter.

All money collected for penalties for violations of this Chapter and all money collected for recovery of costs of enforcement of this Chapter shall be made available to the Department responsible for the enforcement action for training and further code enforcement actions.

Section 9.31.320 Compliance With CEQA.

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

Section 9.31.330 Severability.

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

application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 9.31.340 Effective Date.

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

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2010, by the following roll call vote:

AYES:
NOES:
ABSENT:

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

_____
CHAIR, Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of Said Board

By: _____

APPROVED AS TO FORM:

JEANINE B. NADEL, County Counsel

By: _____