

1 **AN ORDINANCE OF THE COUNTY OF BUTTE ADDING ARTICLE I, ENTITLED**
2 **"NONMEDICAL MARIJUANA ORDINANCE" OF CHAPTER 34C ENTITLED**
3 **"NONMEDICAL MARIJUANA ORDINANCE," OF THE BUTTE COUNTY CODE**

4 The Board of Supervisors of the County of Butte ordains as
5 follows:

6 Section 1. Chapter 34C is added to the Butte County Code as
7 follows:

8 **CHAPTER 34C NONMEDICAL MARIJUANA ORDINANCE**

9 **34C-1 Authority and Title.** Pursuant to the authority granted by
10 Article XI, section 7 of the California Constitution, Health and
11 Safety Code section 11362.2, and Government Code section 25845,
12 the Board of Supervisors does enact this Chapter, which shall be
13 known and may be cited as the "Butte County Nonmedical Marijuana
14 Ordinance."

15 **34C-2 Findings and Purpose.**

16 (a) In 2016, voters of the State of California approved
17 Proposition 64, entitled The Control, Regulate and Tax Adult Use
18 of Marijuana Act (the "Adult Use of Marijuana Act" or the "AUMA").

19 (b) The stated purpose of the AUMA is to establish a
20 comprehensive system to legalize, control and regulate the
21 cultivation, processing, manufacture, distribution, testing, and
22 sale of nonmedical marijuana, including marijuana products, for
23 use by adults 21 years and older, and to tax the commercial growth
24 and retail sale of marijuana.

1 (c) The AUMA creates a licensing scheme whereby the State
2 will issue licenses to businesses authorizing them to cultivate,
3 distribute, transport, store, manufacture, process, and sell
4 nonmedical marijuana and marijuana products for adults 21 years of
5 age and older, with such licenses expected to be issued by January
6 1, 2018.

7 (d) The AUMA states that nothing in it shall be interpreted
8 to supersede or limit the authority of a local jurisdiction to
9 adopt and enforce local ordinances to regulate businesses licensed
10 under the AUMA. The AUMA allows local governments to ban
11 nonmedical marijuana businesses, and mandates that the State
12 licensing authorities shall not approve an application for a State
13 license if approval of the State license will violate the
14 provisions of any local ordinance or regulation adopted in
15 accordance with the requirements of the AUMA.

16 (e) The AUMA provides that it shall be lawful under state
17 and local law for persons 21 years of age and older to plant,
18 cultivate, harvest, dry, or possess not more than six marijuana
19 plants, and possess the marijuana produced by the plants, subject
20 to the following restrictions: 1) A person shall plant, cultivate,
21 harvest, dry or possess plants in accordance with local ordinances;
22 2) the plants and any marijuana produced by the plants in excess
23 of 28.5 grams are kept within the person's private residence, or
24 upon the grounds of a private residence, in a locked space, and
25 not visible by normal unaided vision from a public place; and 3)

1 not more than six plants may be planted, cultivated, harvested,
2 dried, or processed within a single private residence, or upon the
3 grounds of a private residence, at any one time.

4 (f) The AUMA allows a county to enact and enforce "reasonable
5 regulations" to regulate the possession, planting, cultivation,
6 harvesting, drying, or processing of the six marijuana plants, as
7 well as the possession of the marijuana produced by the plants.

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

20 (h) In a series of memoranda issued in October 2009, June
21 2011, and August 2013, the U.S. Department of Justice provided
22 guidance to federal prosecutors concerning marijuana enforcement
23 under the Controlled Substances Act, and generally advised that it
24 is not likely an efficient use of federal resources to prosecute
25 those persons or entities acting in compliance with a strong and

1 effective state regulatory system for the cultivation and
2 distribution of marijuana. These guidelines are understood to
3 allow states to legalize marijuana so long as the state laws
4 adequately address the following goals of preventing: (1)
5 distribution of marijuana to minors; (2) revenue from the sale of
6 marijuana going to criminal enterprises; (3) diversion of
7 marijuana from states where it is legal under state law to other
8 states; (4) state authorized marijuana activity from being used as
9 a cover for the trafficking of other illegal drugs; (5) violence
10 and the use of firearms in the cultivation and distribution of
11 marijuana (6) drugged driving and the exacerbation of other adverse
12 public health consequences associated with marijuana use; (7)
13 growing of marijuana on public lands and the attendant public
14 safety environmental dangers; and (8) possession or use of
15 marijuana on federal property.

16 (i) The County's geographic and climatic conditions, which
17 include dense forested areas that receive substantial
18 precipitation, along with sparse population in many areas of the
19 County, provide conditions that are favorable to outdoor marijuana
20 cultivation. Outdoor marijuana growers can achieve a high per-
21 plant yield because of the County's favorable growing conditions.

22 (j) The County has a compelling interest in protecting the
23 public health, safety, and welfare of its residents and businesses,
24 and preserving the peace and integrity of the unincorporated areas
25 in the County. In the past, significant concerns have been raised

1 regarding the land use impacts that the possession, planting,
2 cultivation, harvesting, drying, processing, distributing,
3 transporting, storing, manufacturing, and sale of marijuana will
4 have on the public health, safety, and welfare of the residents of
5 Butte County, and the environment. Comprehensive civil regulation
6 of premises used for marijuana cultivation is proper and necessary
7 to avoid the risks of criminal activity, degradation of the natural
8 environment, malodorous smells, and indoor electrical fire hazards
9 that may result from unregulated marijuana cultivation.

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

23 (l) It is the purpose and intent of this Chapter to
24 implement State law by providing a means for regulating the
25 cultivation of nonmedical marijuana in a manner that is consistent

1 with State law, and in a manner that promotes the health, safety,
2 and welfare of the residents and businesses within the
3 unincorporated territory of the County of Butte.

4 (m) It is also the purpose and intent of this Chapter to
5 provide a complaint-driven civil process to remedy nuisances
6 related to nonmedical marijuana cultivation.

7 **34C-3 Definitions.**

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

10 (a) "Accessory structure" means a fully enclosed structure
11 that is located on the grounds of a "private residence," and is
12 detached from the "private residence," as that term is defined
13 herein.

14 (b) "Child Care Center" means any licensed child care center,
15 daycare center, or childcare home, or any preschool.

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

19 (d) "Code Enforcement Officer" means any person employed by
20 the County of Butte and appointed to the position of code
21 enforcement officer.

22 (e) "Cultivation" means any activity involving the planting,
23 growing, harvesting, drying, curing, grading, or trimming of
24 marijuana.

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

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

9 (h) "Indoors" means entirely within a "private residence" or
10 "accessory structure" as defined herein.

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

15 (j) "Marijuana" has the same meaning as in Section 11018 of
16 the California Health & Safety Code.

17 (k) "Outdoors" means any location that is not "indoors" as
18 defined herein.

19 (l) "Parcel" means a "legal parcel" as defined herein.

20 (m) "Premises" means a single, legal parcel of property that
21 includes an occupied legal residence that is a dwelling in
22 compliance with Chapter 26 of the Butte County Code and has also
23 met the requirements of Sections 34C-6 and 34C-7.

24 (n) "Private residence" means a house, apartment unit, mobile
25 home, or other similar dwelling.

1 (o) "Residential treatment facility" means a facility
2 providing for treatment of drug and alcohol dependency, including
3 any "sober living facility" run by treatment providers for the
4 benefit of transitional living.

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

14 (q) "School Bus Stop" means any location designated in
15 accordance with California Code of Regulations, Title 13, section
16 1238, to receive school buses, as defined in California Vehicle
17 Code section 233, or school pupil activity buses, as defined in
18 Vehicle Code section 546.

19 (r) "School Evacuation Site" means any location designated by
20 formal action of the governing body, Superintendent, or principal
21 of any school as a location to which juveniles are to be evacuated
22 to, or are to assemble at, in the event of an emergency or other
23 incident at the school.

24 (s) "Youth-oriented facility" means elementary school, middle
25 school, junior high school, high school, public park, and any

1 establishment that advertises in a manner that identifies the
2 establishment as catering to or providing services primarily
3 intended for minors, or the individuals who regularly patronize,
4 congregate or assemble at the establishment are predominantly
5 minors. This shall not include a day care or preschool facility.

6 **34C-4 Nuisance Declared; Cultivation Restrictions.**

7 (a) The cultivation of marijuana that is not in compliance
8 with the requirements set out in this Chapter is hereby declared
9 to be unlawful, and a public nuisance, which may be abated in
10 accordance with this Chapter.

11 (1) Not more than six marijuana plants may be cultivated
12 indoors, or in an outdoor garden located upon the grounds of a
13 private residence, at any one time.

14 (2) If the premises is less than five (5) acres in size, the
15 cultivation of not more than six marijuana plants, and the
16 possession of the marijuana produced by the plants, shall only
17 take place indoors, and in one contiguous space.

18 (3) If the premises is five (5) acres in size or greater,
19 the cultivation of not more than six marijuana plants, and the
20 possession of the marijuana produced by the plants, may take place
21 either indoors, or in an outdoor garden located on the grounds of
22 a private residence. The entire cultivation must take place in
23 one contiguous space.

24 (b) For cultivation to be permissible inside an accessory
25 structure, the accessory structure must: 1) comply with the

1 California Building Standards Code (Title 24 California Code of
2 Regulations), as adopted by the County of Butte; 2) be secure
3 against unauthorized entry; 3) be accessible only through one (1)
4 or more lockable doors; 4) be constructed of approved building
5 materials, including glass, so as long as the marijuana being
6 cultivated cannot be seen from any public right-of-way, including
7 neighboring parcels; 5) contain a ventilation and filtration
8 system that prevents marijuana plant odors from exiting the
9 interior of the structure; 6) be located in the rear yard area of
10 a legal parcel or premises; and 7) maintain the setbacks set forth
11 in section 34C-8.

12 (c) The installation of electrical fixtures, plumbing, or
13 ventilation/filtration systems, for the purpose of modifying an
14 existing structure to meet the requirements of an accessory
15 structure, shall require a Building Permit.

16 **34C-5. Complaints.**

17 Any person may make a complaint relating to this Chapter.

18 **34C-6. Residency requirements.**

19 Persons engaging in the cultivation of marijuana shall either
20 own the premises, or have entered into a written lease with the
21 owner of the premises.

22 **34C-7 Environmental requirements.**

23 (a) Any parcel where the cultivation of marijuana takes
24 place shall: (1) have a permitted permanent water well or
25 connection to a municipal water source on the premises; (2) not

engage in unlawful or unpermitted surface drawing of water for such cultivation; and (3) not permit illegal discharges of water from the premises.

(b) The premises where the cultivation of marijuana takes place shall either be hooked up to a municipalities' sewer system, or have a Butte County inspected and permitted sewage disposal system.

(c) Persons engaging in the cultivation of marijuana shall use, dispose and store chemicals in accordance with all applicable laws.

34C-8. Setbacks; Other Restrictions.

(a) Each accessory structure or outdoor garden area that constitutes the single cultivation area where marijuana is cultivated shall be set back from the boundaries of the premises as follows:

(1) If the premises is less than five (5) acres, and the marijuana cultivation takes place inside an accessory structure, the accessory structure shall be set back at least fifteen (15) feet from all boundaries of the premises, and at least seventy-five (75) feet from any occupied residential structure located on a separate legal parcel, unless the Director of the Department of Development Services or his or her designee reduces or waives one or both of these requirements based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall

1 be notified in writing of any exercise of such discretion under
2 this section.

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

16 (3) If the premises is greater than ten (10) acres in size,
17 the accessory structure or outdoor garden area constituting the
18 single cultivation area shall be set back at least one hundred and
19 fifty (150) feet from all boundaries of the premises, and at least
20 one hundred and fifty (150) feet from any occupied residential
21 structure located on a separate legal parcel, unless the Director
22 of the Department of Development Services or his or her designee
23 reduces or waives one or both of these requirements based upon a
24 finding of unusual hardship for that particular parcel to comply
25 with such setback requirements. Owners of parcels adjacent to

1 such premises shall be notified in writing of any exercise of such
2 discretion under this section.

3 (4) For cultivation taking place in an accessory structure,
4 such setback distance shall be measured in a straight line from
5 the accessory structure to the boundary line of the premises. For
6 cultivation taking place in an outdoor garden area, the cultivation
7 area shall be measured from the outer edge of the canopy of the
8 marijuana plants, and not from the stalk, to the boundary line of
9 the premises.

10 (b) Notwithstanding the requirements of subsection 34C-4(a)
11 above, the cultivation of marijuana, in any amount or quantity,
12 shall not be allowed in the following areas:

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

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

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

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

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

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

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

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

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

21 **34C-9 Permission of Property Owner.**

22 If the person(s) cultivating on any legal parcel is/are not the
23 legal owner(s) of the parcel, such person(s) shall obtain the
24 written permission (including notarized signatures) of the legal
25 owner(s) consenting to the cultivation of marijuana on the parcel.

1 **34C-10 Fencing.**

2 All marijuana grown outside of any building must be fully enclosed
3 by a solid and opaque fence (of approved materials by the
4 Department of Development Services) at least six (6) feet in height
5 or a height sufficient to conceal the marijuana from view,
6 whichever is higher, provided, however, that such fence shall not
7 be required for marijuana grown on premises of five (5) acres or
8 more when such marijuana is grown out of sight from public view.
9 The Director of the Department of Development Services or his or
10 her designee shall have discretion to determine whether the plants
11 are grown out of sight from public view. Should the marijuana
12 plant(s) grow higher than the fence, either (1) the plants shall
13 be cut so as to not extend higher than such fence or (2) the person
14 growing marijuana plants shall install a fence sufficient to
15 conceal the marijuana plants from public view and comply with all
16 applicable Butte County permit requirements. The fence must be
17 adequately secure to prevent unauthorized entry. Bushes or
18 hedgerows may constitute an adequate fence under this Chapter on
19 parcels five (5) acres and above in size.

20 **34C-11 Public Nuisance; Violations.**

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

24 **34C-12 Enforcement.**

1 (a) The County may, in its discretion, abate a violation of
2 this Chapter by the prosecution of a civil action, including an
3 action for injunctive relief, without first going through the
4 administrative procedures set forth herein. The remedy of
5 injunctive relief may take the form of a court order, enforceable
6 through civil contempt proceedings, prohibiting the maintenance of
7 a violation of this Chapter, or requiring compliance with other
8 terms.

9 (b) The County may also abate a violation of this Chapter
10 through the abatement process established by Government Code
11 Section 25845.

12 **34C-13 Abatement procedures.**

13 (a) Whenever a Code Enforcement Officer determines that a
14 public nuisance (as defined in this Chapter) exists, he or she
15 shall post a 72-Hour Notice to Abate on the property where the
16 public nuisance exists, and mail a copy of the same to those
17 persons shown on the latest County tax roll to be the owners of
18 the property. The 72-Hour Notice to Abate shall inform the owner
19 and/or tenants of the basis for the violation, and that an
20 Administrative Penalty of \$500 per day will accrue for each day
21 that the violation continues to exist; explain that if the
22 violation is not corrected, the matter will be set for a Nuisance
23 Abatement Hearing, at which time the Administrative Penalty will
24 increase to \$1,000 per day; and explain that to prevent the accrual
25 of additional penalties and costs, the owner or tenant must contact

1 the Code Enforcement Office and arrange a time for a Code
2 Enforcement Officer to inspect the property, and confirm that the
3 violation(s) have been corrected.

4 (b) If the nuisance continues to exist after the expiration
5 of the seventy-two (72) hour period, a Code Enforcement Officer
6 may set the matter for hearing by issuing a Notice of Nuisance
7 Abatement Hearing. If the matter is set for hearing, the Code
8 Enforcement Officer shall post the property upon which the public
9 nuisance exists and shall mail, with a proof of service, notices
10 to those persons known to be in possession of the property, if
11 any, and to persons shown on the latest County tax roll to be the
12 owners of the property at least ten (10) days prior to the hearing.
13 The Administrative Penalty shall increase to \$1,000 per day from
14 the date the Notice of Nuisance Abatement Hearing is posted on the
15 property, and shall continue to accrue at that rate for each day
16 that the violation continues to exist. Both the mailed and posted
17 notice shall be in substantially the following form:

18 **NOTICE OF NUISANCE ABATEMENT HEARING**

19 The owner(s) and occupant(s) of real property
20 described on the latest equalized Butte
21 County tax roll as A.P. No. _____ and
22 having a street address of _____ is
23 (are) hereby notified to appear before a
24 Hearing Officer of the County of Butte at
25 _____ on _____, 20_____,

1 at the hour of _____ o'clock
2 _____m., to show cause, if any there
3 be, why the use of said real property should
4 not be found to be a public nuisance and abated
5 pursuant to the Butte County Code Chapter 34C.
6 The Department of Development Services has
7 determined that conditions exist on the above
8 property which constitute a public nuisance
9 and violate Butte County Code section(s)
10 _____, as follows: _____. After
11 hearing, if a violation is found to have
12 existed at the time the Notice of Nuisance
13 Abatement Hearing was posted on the property,
14 the Administrative Costs incurred in
15 prosecuting the violation, including, but not
16 limited to, the cost of the Hearing Officer,
17 the cost of prior time and expenses associated
18 with bringing the matter to hearing,
19 attorneys' fees, the cost associated with any
20 appeals from the decision of the Hearing
21 Officer, the cost of judicially abating the
22 violation, the cost of labor and material
23 necessary to physically abate the violation,
24 the cost of securing expert and other
25 witnesses, and the accrual of any

1 Administrative Penalties, may become a lien
2 against the subject property and may also be
3 assessed against the property in the same
4 manner as taxes. If a lien is recorded, it
5 will have the same force and effect as an
6 abstract of judgment which is recorded as a
7 money judgment obtained in a court of law. If
8 you fail to appear at the hearing or if you
9 fail to raise any defense or assert any
10 relevant point at the time of hearing, the
11 County will assert, in later judicial
12 proceedings to enforce an order of abatement,
13 that you have waived all rights to assert such
14 defenses or such points.

15 In preparing for such hearing, you should be
16 aware that if an initial showing is made by
17 the County, sufficient to persuade the Hearing
18 Officer that a public nuisance existed on your
19 property at the time the Notice of Nuisance
20 Abatement Hearing was posted, you will then
21 have the burden of proving that no public
22 nuisance existed on your property. Therefore,
23 you should be prepared to introduce oral and
24 documentary evidence proving why, in your
25 opinion, your use of the property is not a

1 public nuisance as defined in this Chapter. A
2 copy of the Butte County Code Chapter 34C
3 relating to Marijuana Cultivation nuisance
4 abatement hearings is enclosed to assist you
5 in the preparation of your presentation.

6 If an initial showing sufficient to persuade
7 the Hearing Officer that a public nuisance
8 existed on your property is made by the Code
9 Enforcement Officer, your failure to sustain
10 the burden of showing that no public nuisance
11 existed on the property may result in a
12 decision by the Hearing Officer that a public
13 nuisance did exist, and that the County is
14 entitled to recover its Administrative Costs,
15 and all Administrative Penalties that accrued
16 up to the time that the nuisance was abated.

17 Further, if the Hearing Officer finds that a
18 public nuisance continues to exist on your
19 property, and you fail to abate the nuisance
20 promptly, the County may abate the nuisance.

21 If the County abates the nuisance, in addition
22 to being able to recover its Administrative
23 Costs and Penalties, you may be responsible
24 for the actual costs of the abatement. In
25 either circumstance, all Administrative and

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

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

22 IMPORTANT: READ THIS NOTICE CAREFULLY.

23 IN ADDITION TO ANY ADMINISTRATIVE CIVIL
24 PENALTIES THAT HAVE ALREADY ACCRUED, AN
25

ADMINISTRATIVE CIVIL PENALTY OF \$1,000 PER DAY
IS HEREBY IMPOSED FROM THE DATE THIS NOTICE
WAS POSTED ON YOUR PROPERTY, AND WILL CONTINUE
TO ACCRUE AT THAT RATE UNTIL THE NUISANCE IS
ABATED. IN ORDER TO PREVENT THE ACCRUAL OF
ONGOING PENALTIES AND COSTS, YOU MUST CONTACT
THE CODE ENFORCEMENT OFFICE, AND ARRANGE A
TIME FOR A CODE ENFORCEMENT OFFICER TO INSPECT
YOUR PROPERTY, AND CONFIRM THAT THE
VIOLATION(S) HAVE BEEN CORRECTED.

FAILURE TO APPEAR AND RESPOND AT THE TIME SET
FORTH IN THIS NOTICE WILL LIKELY RESULT IN
ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND
TERMINATION OF USES OF OR CONDITIONS ON YOUR
PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT
SERVICES CONTENDS ARE IN VIOLATION OF THE
BUTTE COUNTY CODE.

Dated: _____/_____/_____

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

By: _____

Enclosure: Butte County Code Chapter 34C

(c) All hearings conducted under this Chapter shall be held
before a Hearing Officer designated pursuant to the protocol set
forth in that document entitled the "Butte County Administrative

1 Hearing Officer Program." The Program is based upon an alphabetical
2 rotation through attorneys currently under contract through the
3 Program.

4 (d) At the time and place set for the hearing, the Hearing
5 Officer shall hear testimony and receive written and/or
6 documentary evidence relating to the alleged violation. Additional
7 procedural rules may be adopted by resolution of the Board of
8 Supervisors. The Director of Development Services, or his or her
9 designee, shall tape record the hearing, and provide a copy of the
10 recording to the Hearing Officer following the conclusion of the
11 hearing. The Hearing Officer shall preserve the record of the
12 hearing, and all photographs and demonstrative and documentary
13 evidence introduced at the time of the hearing, for a period of
14 three (3) years.

15 (e) Within five (5) days after the hearing is closed, the
16 Hearing Officer shall render his or her written decision relating
17 to the existence or nonexistence of the alleged public nuisance.
18 If a violation is found to have existed at the time the Notice of
19 Nuisance Abatement Hearing was posted, the decision shall include
20 a statement that the County is entitled to recover its
21 Administrative Costs and Administrative Penalties. If the Hearing
22 Officer determines that the violation continues to exist, the
23 decision shall also order that the owner of the property, or
24 persons known to be in possession of the property, abate the
25 violation within a reasonable time, not to exceed ten (10) days

1 from the date the decision is placed in the mail. The decision
2 shall contain findings of fact and conclusions of law. A copy of
3 the decision shall be mailed by certified mail, return receipt
4 requested, to the person or persons shown on the last County tax
5 roll to be the owners of the property which is the subject of the
6 hearing and the occupant of such parcel, if any. All other persons
7 noticed pursuant to this section shall be mailed a copy of the
8 decision by first class mail, postage prepaid.

9 (f) The decision of the Hearing Officer shall be final and
10 conclusive on the date the certified mail set forth in subsection
11 (e) above, is deposited in the mail.

12 (g)(1) Notwithstanding any other provisions of this Code, if
13 a final decision of the Hearing Officer finds that a violation
14 exists and the public nuisance is not voluntarily abated within
15 ten (10) days of said decision being placed in the mail by the
16 Hearing Officer, the Director of Development Services or his or
17 her designee may abate the public nuisance by cutting and/or
18 removing all marijuana plants from the property, pursuant to a
19 warrant issued by a court of competent jurisdiction. The owner of
20 the property shall be responsible for paying all of the County's
21 Abatement Costs and Administrative Costs, including but not
22 limited to, those cost items set forth in the notice required by
23 subsection (a) above, and Administrative Penalties. The Director
24 of Development Services or his or her designee shall keep an
25 accounting of the Abatement and Administrative Costs for each case.

1 Upon completion of the abatement of the nuisance, whether by the
2 Director of Development Services or his or her designee, or the
3 owner or tenant, the Director of Development Services or his or
4 her designee shall post the property and send a bill to the owner,
5 and any persons known to be in possession of the property,
6 requesting payment of the County's Abatement and Administrative
7 Costs, as well as all Administrative Penalties. The bill shall
8 also state that failure to pay the Costs and Penalties within
9 fifteen (15) days from service of the bill may result in the
10 recording of a lien and the placement of a special assessment
11 against the property.

12 (2) If the County's Costs and Penalties are not paid within
13 fifteen (15) days from service of the bill, the Director of
14 Development Services shall render an itemized report to the Clerk
15 of the Board of Supervisors for submittal to the Board of
16 Supervisors for hearing and consideration regarding the proposed
17 lien and special assessment. The report shall include the names
18 and addresses of the owner of record and any persons known to be
19 in possession of the property, and an itemized account of the
20 County's Abatement Costs, Administrative Costs, and Administrative
21 Penalties. At least fifteen (15) days prior to said hearing, the
22 Clerk of the Board of Supervisors shall give notice, with an
23 affidavit of service, of said hearing to all persons named in the
24 Director of Development Services' report and the Director of
25 Development Services or his or her designee shall post the property

1 with a copy of the notice. The notice shall describe the property
2 by assessor's parcel number and street number or other description
3 sufficient to enable identification of the property and contain a
4 statement of the amount of the proposed lien and special
5 assessment. The notice shall also contain a statement that the
6 Board will hear and consider objections and protests to the
7 proposed lien and special assessment at the designated time and
8 place.

9 (h) At the time and place fixed in the notice, the Board of
10 Supervisors shall hear and consider the proposed lien and special
11 assessment together with objections and protests thereto. At the
12 conclusion of the hearing, the Board of Supervisors may make such
13 modifications and revisions to the proposed lien and special
14 assessment as it deems just and may order that the proposed lien
15 and special assessment be recorded by the Director of Development
16 Services and specially assessed against the property by the
17 Auditor-Controller's Office. The lien shall have the same force,
18 priority and effect as a judgment lien and the special assessment
19 shall have the same priority as other County taxes.

20 (i) The notice of lien shall, at a minimum, identify the
21 record owner or possessor of the property, set forth the date upon
22 which the decision of the Hearing Officer was issued, describe the
23 real property subject to the lien, set forth the amount of the
24 Costs and Penalties incurred to date and, if applicable, the date
25 upon which the abatement was completed. If the abatement has not

1 yet been completed, the notice shall so state and shall also
2 indicate that the lien is a partial lien and that additional
3 Abatement Costs will be incurred in the future.

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

16 (j) The decision of the Hearing Officer or Board of
17 Supervisors may be recorded by the Director of Development
18 Services. In the event of such recordation, and in the further
19 event that the violation is corrected and all Costs and Penalties
20 are paid, a notice of such correction shall be recorded. The
21 Director of Development Services is authorized to prepare and
22 record a notice of correction. Correction of the violation shall
23 not excuse the property owner's liability for costs incurred during
24 the administrative abatement process (Abatement Costs,
25 Administrative Costs, and Administrative Penalties as defined in

sections 34C-14 and 34C-16 of this Chapter). In any action to foreclose on a lien issued pursuant to this Chapter, the County shall be entitled to an award of attorney's fees.

34C-14 Abatement costs; Administrative costs.

(a) The term "Abatement Costs" means any costs or expenses reasonably related to the abatement of conditions which violate the Butte County Code, and shall include, but not be limited to, enforcement, investigation, attorneys' fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.

(b) The term "Administrative Costs," shall include the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets. The time expended by Development Services and Auditor-Controller staff, to calculate the above costs and prepare itemized invoices, may also be recovered.

(c) In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. 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.

34C-15 Non-exclusive remedy.

1 This Chapter is cumulative to all other remedies now or hereafter
2 available to abate or otherwise regulate or prevent public
3 nuisances.

4 **34C-16 Administrative Civil Penalties.**

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

8 (a) Five hundred dollars (\$500.00) per day from the day the
9 72-Hour Notice is posted on the property, and continuing for each
10 day that the violation continues to exist; however, if a Notice of
11 Nuisance Abatement Hearing is issued, the penalty shall increase
12 to one thousand dollars (\$1,000.00) per day from the date the
13 Notice of Nuisance Abatement Hearing is posted on the property,
14 and shall continue to accrue at that rate for each day that the
15 violation continues to exist, until the violation is abated by
16 whatever means.

17 (b) At the Nuisance Abatement Hearing, the Hearing Officer
18 shall determine the total amount of Administrative Penalties that
19 have accrued at the time of the hearing, and that amount shall be
20 reflected in the decision and awarded to the County. If at the
21 time of the hearing the nuisance has yet to be abated, the decision
22 shall state that Administrative Penalties shall continue to accrue
23 at \$1,000 per day until the nuisance is abated. The decision of
24 the Hearing Officer shall be final and conclusive on the date the
25 decision is deposited in the mail.

1 (c) Administrative Penalties shall not be awarded if the
2 property owner establishes all of the following: (i) that, at the
3 time he or she acquired the property, a violation of this code
4 already existed on the property; (ii) the property owner did not
5 have actual or constructive notice of the existence of that
6 violation; and (iii) within thirty (30) days after the mailing of
7 notice of the existence of that violation, the property owner
8 initiates and pursues, with due diligence, good faith efforts, to
9 meet the requirements of this code.

10 (d) In the event a tenant or property owner contacts a Code
11 Enforcement Officer and demonstrates that all violations have been
12 corrected in a timely manner prior to a hearing being conducted
13 pursuant to this Chapter, the Director of Development Services, or
14 his or her designee, has the authority to waive or reduce the
15 amount of penalties owed, and cancel the scheduled hearing, if in
16 his or her opinion such a reduction and hearing cancellation is
17 warranted.

18 (e) Following the issuance of a Hearing Officer's decision,
19 the Director of Development Services, or his or her designee, may
20 compromise the amount of any administrative penalty imposed by the
21 Hearing Officer. When determining whether to compromise any
22 penalty amount, the Director, or his or her designee, shall take
23 into consideration the nature, circumstances, and gravity of the
24 violation(s), any prior history of violations, the degree of
25 culpability, the financial burden to the person(s) upon whom the

penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for further legal action, and any other matters justice may require. The compromise shall be subject to any terms and conditions prescribed by the Director, or his or her designee, which may include, without limitation, a condition requiring that the subject legal property and all responsible parties remain free of any additional violations for a specified period of time. Any person accepting a compromise penalty hereunder shall be required to execute a Compromise Agreement in a form approved by County Counsel.

34C-17 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 34C-11 through 34C-14 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the County to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 34C-13 but the formal notice and hearing procedures set forth in this Chapter shall not apply. No summary abatement shall occur prior to consultation with the Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in this Chapter.

1 **34C-18 No Duty to Enforce.**

2 Nothing in this Chapter shall be construed as imposing on the
3 enforcing officer or the County of Butte any duty to issue a Notice
4 to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful
5 marijuana cultivation, nor to take any other action with regard to
6 any unlawful marijuana cultivation, and neither the enforcing
7 officer nor the County shall be held liable for failure to issue
8 an order to abate any unlawful marijuana cultivation, nor for
9 failure to abate any unlawful marijuana cultivation, nor for
10 failure to take any other action with regard to any unlawful
11 marijuana cultivation.

12 **34C-19 Use of Money Collected Under This Chapter.**

13 All money collected for penalties for violations of this Chapter
14 and all money collected for recovery of costs of enforcement of
15 this Chapter shall be made available to the Departments, who are
16 involved in the enforcement of this Chapter.

17 Section 2. (CEQA). The County finds that this Chapter is not
18 subject to the California Environmental Quality Act (CEQA)
19 pursuant to Sections 15060(c)(2) (the activity will result in a
20 direct or reasonably foreseeable indirect physical change in the
21 environment) and 15061(b)(3) (there is no possibility the activity
22 in question may have a significant effect on the environment). In
23 addition to the foregoing general exemptions, the following
24 categorical exemptions apply: Sections 15308 (actions taken as
25 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 3. 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, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 4. Effective Date and Publication. 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 final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the ____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

1 _____
2 Bill Connelly, Chair of the
3 Butte County Board of Supervisors

4 ATTEST:

5
6 Paul Hahn,
7 Chief Administrative Officer and
8 Clerk of the Board

9 By: _____
10 Deputy

engage in unlawful or unpermitted surface drawing of water for such cultivation; and (3) not permit illegal discharges of water from the premises.

(b) The premises where the cultivation of marijuana takes place shall either be hooked up to a municipalities' sewer system, or have a Butte County inspected and permitted sewage disposal system.

(c) Persons engaging in the cultivation of marijuana shall use, dispose and store chemicals in accordance with all applicable laws.

34C-8. Setbacks; Other Restrictions.

(a) Each accessory structure or outdoor garden area that constitutes the single cultivation area where marijuana is cultivated shall be set back from the boundaries of the premises as follows:

(1) If the premises is less than five (5) acres, and the marijuana cultivation takes place inside an accessory structure, the accessory structure shall be set back at least fifteen (15) feet from all boundaries of the premises, and at least seventy-five (75) feet from any occupied residential structure located on a separate legal parcel, unless the Director of the Department of Development Services or his or her designee reduces or waives one or both of these requirements based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall

1 be notified in writing of any exercise of such discretion under
2 this section.

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

16 (3) If the premises is greater than ten (10) acres in size,
17 the accessory structure or outdoor garden area constituting the
18 single cultivation area shall be set back at least one hundred and
19 fifty (150) feet from all boundaries of the premises, and at least
20 one hundred and fifty (150) feet from any occupied residential
21 structure located on a separate legal parcel, unless the Director
22 of the Department of Development Services or his or her designee
23 reduces or waives one or both of these requirements based upon a
24 finding of unusual hardship for that particular parcel to comply
25 with such setback requirements. Owners of parcels adjacent to

1 such premises shall be notified in writing of any exercise of such
2 discretion under this section.

3 (43) For cultivation taking place in an accessory structure,
4 such setback distance shall be measured in a straight line from
5 the accessory structure to the boundary line of the premises. For
6 cultivation taking place in an outdoor garden area, the cultivation
7 area shall be measured from the outer edge of the canopy of the
8 marijuana plants, and not from the stalk, to the boundary line of
9 the premises.

10 (b) Notwithstanding the requirements of subsection 34C-4(a)
11 above, the cultivation of marijuana, in any amount or quantity,
12 shall not be allowed in the following areas:

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

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

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

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

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

Setback Requirements

Property Size	Medical Marijuana (34A)	Non-Medical Marijuana (34C)
.5 acres or less	<p><u>Grow Area:</u> Limited to 50 sq. ft., inside a detached structure (34A-4(b)(1)).</p> <p><u>Setback Requirement:</u> Exterior walls of detached structure must be set back at least 15 ft. from all boundaries of the premises, unless reduced or waived (34A-8(a)(1)).</p>	<p><u>Grow Area:</u> Limited to 6 plants, indoors only (34C-4(a)(2)).</p> <p><u>Setback Requirements:</u> If inside an accessory structure (as opposed to inside a private residence), exterior walls of the accessory structure must be set back at least 15 ft. from all boundaries of the premises, and 75 ft. from any occupied residential structure located on a neighboring parcel, unless reduced or waived (34C-8(a)(1)).</p>
Greater than .5 acre but less than 5 acres	<p><u>Grow Area:</u> Limited to 50 sq. ft., either indoors or outdoors (34A-4(b)(2)).</p> <p><u>Setback Requirements:</u> Exterior wall of detached structure (indoor grow) or fence (outdoor grow) must be set back: 1) 50 ft. from all boundaries of the premises, unless reduced or waived (34A-8(a)(2)); and 2) 50 ft. from any occupied residential structure located on a neighboring parcel; no option to reduce or waive (34A-8(b)(3)).</p>	<p><u>Grow Area:</u> Limited to 6 plants, indoors only (34C-4(a)(2)).</p> <p><u>Setback Requirements:</u> If inside an accessory structure, exterior walls of the accessory structure must be set back at least 15 ft. from all boundaries of the premises, and 75 ft. from any occupied residential structure located on a neighboring parcel, unless reduced or waived (34C-8(a)(1)).</p>

Setback Requirements

<p>5 acres or greater but less than 10 acres</p>	<p><u>Grow Area:</u> Limited to 100 sq. ft., either indoors or outdoors (34A-4(b)(3)).</p> <p><u>Setback Requirements:</u> Exterior wall of detached structure (indoor grow) or fence (outdoor grow) must be set back: 1) 75 ft. from all boundaries of the premises, unless reduced or waived (34A-8(a)(3)); and 2) 100 ft. from any occupied residential structure located on a neighboring parcel; no option to reduce or waive (34A-8(b)(3)).</p>	<p><u>Grow Area:</u> 6 plants, indoors or outdoors, in one contiguous area (34C-4(a)(3)).</p> <p><u>Setback Requirements:</u> If outdoors or inside an accessory structure, the exterior wall of the accessory structure (indoor grow) or outer edge of plant canopy (outdoor grow) must be set back 75 ft. from all boundaries of the premises, and 150 ft. from any occupied residential structure, unless reduced or waived (34C-8(a)(2)).</p>
<p>10 acres or greater</p>	<p><u>Grow Area:</u> Limited to 150 sq. ft., either indoors or outdoors (34A-4(b)(4)).</p> <p><u>Setback Requirements:</u> Exterior wall of detached structure (indoor grow) or fence (outdoor grow) must be set back: 1) 150 ft. from all boundaries of the premises, unless reduced or waived (34A-8(a)(4)); and 2) 100 ft. from any occupied residential structure located on a neighboring parcel; no option to reduce or waive (34A-8(b)(3)).</p>	<p><u>Grow Area:</u> 6 plants, indoors or outdoors, in one contiguous area (34C-4(a)(3)).</p> <p><u>Setback Requirements:</u> If outdoors or inside an accessory structure, the exterior wall of the accessory structure (indoor grow) or outer edge of plant canopy (outdoor grow) must be set back 150 ft. from all boundaries of the premises, and 150 ft. from any occupied residential structure, unless reduced or waived (34C-8(a)(3)).</p>