

**HUMBOLDT COUNTY 314-55.1 MEDICAL MARIJUANA
LAND USES DRAFT PROPOSAL**

314-55.1 MEDICAL MARIJUANA HEALTH AND SAFETY CODE

General Provisions

55.1.1 Authority and Title

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

55.1.2 Purpose and Intent

The purpose and intent of this Code is to regulate the health and safety aspects of medical marijuana in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that may often accompany the cultivation and transfer of medical marijuana; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

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

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient's caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from

engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”

3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act”) was enacted to clarify the scope of the Compassionate Use Act. It also specifically permits patients and their primary caregivers to associate in order collectively or cooperatively to cultivate marijuana and provides these individuals with a limited defense to certain specified California criminal statutes (codified at Health and Safety Code section 11362.775).
4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the cultivation, processing, or distribution of medical marijuana within the County. A provision of the Medical Marijuana Program Act (codified as Health and Safety Code section 11362.83) expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420
5. The California State Board of Equalization, in February 2007, issued a special notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit issued by the Board of Equalization.
6. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
7. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The federal Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment and has not been accepted as safe for use under medical treatment.
8. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the federal Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California cases, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state’s reserved powers to not punish certain marijuana offenses under state law.
9. The County’s unique geographical and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to marijuana cultivation. Law

enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. Marijuana growers may achieve a high per-plant yield in the County because of the favorable growing conditions. As of 2010, Law Enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.

10. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and murders related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana has occurred. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
11. Cultivation of marijuana can also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and creating the risk of burglary and robbery at that location.
12. Marijuana that is grown indoors can lead to mold, mildew and moisture damage to the building in which it is grown. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may have health consequences for the individual who consumes the marijuana. Marijuana that is improperly stored may develop mold and likewise be a potential health risk to the individual who consumes it.
13. Distribution or transfer of medical marijuana through collectives, cooperatives and delivery services may create negative impacts to the surrounding community such as traffic problems, neighborhood compatibility issues, lighting, aesthetics, public health and safety and security issues and other nuisance-related problems.
14. Private kitchens or commercial facilities that produce and distribute food and beverages containing marijuana, also known as marijuana edibles, are not inspected for safe food handling practices, cleanliness or sanitation under current state or local law. Many marijuana edibles are packaged in such a way as to appeal to children or imitate a particular food item, such as brownies or cookies. Additionally, the packaging of marijuana edibles often fails to disclose the amount of marijuana in the edible, reveal when the edible was made, state if any known allergens are present in the edible, and often fails to clearly state that the edible contains medical marijuana.

15. The rights of qualified patients and their primary caregivers under state law to cultivate marijuana plants for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, regulating the health and safety aspects of medical marijuana cultivation and distribution, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues, as well as a decrease in crime and fires related to the indoor cultivation and distribution of medical marijuana.
16. Growing marijuana may also adversely affect the environment. Indoor grows require extensive use of electricity for grow lights and ventilation fans. An analysis reported in the North Coast Journal on March 11, 2010 from engineers involved in energy research at Humboldt State University found that the average household in Humboldt County used 145 kilowatt-hours of electricity per month. In contrast, an indoor residential marijuana grow at the center of a recent prosecution by the Humboldt County District Attorney used almost 10,000 kilowatt-hours each month. To supply this elevated demand for electricity for indoor marijuana grows throughout the County puts an estimated 20,000 metric tons of carbon dioxide into our atmosphere. Off-grid medical marijuana grows have similar adverse affects on the environment. The grow lights and ventilation fans for these grows are powered by diesel generators, which according to numbers provided by the Humboldt County Drug Task Force and calculated by the energy researchers, emit an estimated 20,000 metric tons of carbon dioxide each year throughout the County. Diesel generators powering marijuana grows have also resulted in a number of fuel and waste oil spills that have impacted local streams and wildlife habitat.
17. The cultivation of marijuana in areas not served by public water systems may result in large, unregulated withdrawals of water from creeks, streams, and rivers. Diminishing the amount of water available in the water systems harms animal and plant species, as well as people with legitimate rights to use a portion of the water.
18. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by State law, the potential impacts to the environment and to public health, safety and welfare as identified above, necessitates that the County create regulations to govern medical marijuana uses, including personal use, member cultivators, dispensing facilities, and dispensing and cultivation facilities in the County of Humboldt.
19. The County finds that the cultivation of more than fifty (50) square feet of medical marijuana per residence within the unincorporated area of the County will result in an unreasonable risk of crime and fire and will likely create odors offensive to people living nearby, as well as resulting in excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution.
20. The County finds that qualified patients or their primary caregivers may be granted a permit to cultivate medical marijuana, indoors, for personal use in excess of fifty (50) square feet and ten (10) feet tall, but not more than one hundred (100) square feet and ten

(10) feet tall, provided that the patient or caregiver applies for and obtains a permit as provided herein, and operates in compliance with this Code.

21. The County finds that qualified member cultivators may be granted a permit to cultivate medical marijuana indoors for a collective, cooperative, dispensing facility or delivery service in excess of one hundred (100) square feet and ten (10) feet tall, but no more than two hundred (200) square feet and ten (10) feet tall, provided that the qualified member cultivator applies for and obtains a permit as provided herein, and operates in compliance with this code.
22. The County finds that qualified patients or their primary caregivers may be granted a permit to cultivate medical marijuana outdoors for personal use in excess of one hundred (100) square feet, but not more than two hundred (200) square feet, provided that the patient or caregiver applies for and obtains a permit as provided herein, and operates in compliance with this code.
23. The County finds that qualified member cultivators may be granted a permit to cultivate medical marijuana outdoors for a collective, cooperative, dispensing facility or delivery service in excess of two hundred (200) square feet, but no more than twenty thousand (20,000) square feet provided that the qualified member cultivator applies for and obtains a permit as provided herein, and operates in compliance with this code.
24. The County finds that medical marijuana dispensing facilities and delivery services may be permitted or allowed with a special use permit in certain specified zones where the potential impacts of the proposed land use on the surrounding community, including issues such as traffic, lighting, aesthetics, security, and neighborhood compatibility are evaluated by the permitting authority.

55.1.4 Applicability and Interpretation

1. The cultivation, processing, and distribution of medical marijuana within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation, processing, or distribution existed or occurred prior to the adoption of this Code.
2. All medical marijuana cultivation, processing, and distribution, regardless of whether the use was previously approved by the Humboldt County Planning Commission or the Humboldt County Board of Supervisors, shall come into full compliance with this Code within one (1) year of the ordinance establishing this Code.
3. Nothing in this Code is intended, nor shall it be construed, to exempt any medical marijuana use from compliance with the Humboldt County health and safety regulations, as well as other applicable provisions of the County Code, or compliance with the Coastal Act and other applicable state laws.
4. Nothing in this Code is intended, nor shall it be construed, to exempt any marijuana cultivation, processing or distribution, or other marijuana related activities from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

5. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation.
6. The definitions in this Code are intended to apply to this Code. Definitions in Humboldt County Code section 314-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any provision of this Code, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Code that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Code are severable.

55.1.6 Release of Liability and Hold Harmless

As a condition of approval of any special use permit approved for a medical marijuana dispensing facility or delivery service, or as a permit for a personal indoor medical marijuana cultivation area of more than fifty feet, but less than 100 feet, or as a condition for a permit for a member cultivator indoor medical marijuana cultivation area of more than one hundred (100) square feet but no more than two hundred (200) square feet, or as a condition for a permit for a personal outdoor medical marijuana cultivation area of more than one hundred (100) square feet, but no more than two hundred (200) square feet, or as a condition for a permit for a member cultivator outdoor medical marijuana cultivation area of more than two hundred (200) square feet, but no more than twenty thousand (20,000) square feet the owner or permittee shall indemnify and hold harmless the County of Humboldt and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the operations at the site of the expansion of the personal cultivation areas or member cultivator areas, or at the site for the collective, cooperative or medical marijuana dispensing facility or delivery service, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation, processing, or distribution of medical marijuana.

55.1.7 Penalties

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

1. Any violation of this Code shall be, and the same hereby is declared to be, a public nuisance and unlawful and shall be subject to injunction, abatement or any other administrative, civil, or criminal remedy available to the County under the applicable state and county laws, including Humboldt County Code section 351-1 et seq. and section 112-5 of the County Code.

55.1.8 Definitions

Active Member: any registered member of a medical marijuana collective or cooperative that has a current and valid medical recommendation on file and has obtained medical marijuana from that collective or cooperative within the last year.

Church: a non-profit organization that operates exclusively for religious purposes and is an organization as described in section 501(c) (3) of the Internal Revenue Tax Code, as amended. For purposes of this Code, "church" includes a church, synagogue, temple, mosque, or other place of worship and related church property, such as a school or a youth camp.

Medical Marijuana Dispensing Facility: a collective or a cooperative that provides medical marijuana by obtaining a special use permit to operate a store front, warehouse, indoor cultivation facility and/or storage facility for the maintenance of records, processing, packaging and storage of medical marijuana

Greenhouse(s): Any enclosed or partially enclosed structure utilized for the cultivation of medical marijuana using less than six hundred (600) watts of lighting per one hundred (100) square feet.

Indoor(s): within a fully enclosed and secure structure that was permitted and complied with the California Building Code in effect at the time it was constructed, as adopted by the County of Humboldt, that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. This does not include greenhouses, which do not exceed the maximum lighting watts per square foot statutes of this ordinance.

Indoor Cultivation Facility (ies): An indoor cultivation area in excess of two hundred (200) square feet with lighting not to exceed one hundred and fifty thousand (150,000) watts.

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

Medical Marijuana Collective: An organization that is jointly owned and operated by its members in order to facilitate and coordinate the cultivation and distribution of medical marijuana to its members as a collaborative effort. The collective shall be operated in such a way as to ensure the security of the medical marijuana and safeguard against the diversion of medical marijuana for non-medical purposes. Pursuant to Health & Safety Code Section 11362.765, no profit may be made by a medical marijuana collective, group or individual.

Medical Marijuana Cooperative: A medical marijuana cooperative shall be democratically controlled and properly organized under the laws of the State of California, which includes filing articles of incorporation with the State and conducting its business, the cultivation and distribution of medical marijuana to its members, as a collaborative effort for the benefit of its members. The cooperative shall be operated in such a way as to ensure the security of the medical marijuana and safeguard against the diversion of medical marijuana for non-medical

purposes. Pursuant to Health & Safety Code Section 11362.765, no profit may be made by a medical marijuana cooperative, group or individual.

Medical Marijuana Delivery Service: A medical marijuana cooperative or collective that does not have a main facility that members come to in order to receive their medical marijuana. Instead, the medical marijuana delivery service has a warehouse, indoor cultivation facility and/or storage facility for the maintenance of records, processing, packaging and storage of medical marijuana, which they bring to the homes of their members as requested. The delivery service shall be operated in such a way as to ensure the security of the medical marijuana and safeguard against the diversion of medical marijuana for non-medical purposes. Pursuant to Health & Safety Code Section 11362.765, no profit may be made by a medical collective, cooperative, group or individual.

Medical Marijuana Edible: A product intended to be eaten or drunk that contains medical marijuana.

Member Cultivator: Any member of a collective or cooperative who is contracted by one or more collectives or cooperatives to cultivate medical marijuana.

Outdoor(s): any location that is not indoors, as defined herein. This includes greenhouses, as defined herein.

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

Place Where Children Congregate: may include, but is not limited to, a school bus stop, park, playground, a school as defined herein, tutoring facility, or any establishment that either advertises in a manner that identifies it as providing services primarily intended for minors or the individuals who regularly patronize, congregate, or assemble at the establishment are primarily minors.

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

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

Residence: any structure designed or used for residential occupancy.

Residential Treatment Facility: a facility, whether residential or non-residential, providing treatment for drug or alcohol dependency.

School: public or private institution of learning for minors offering a regular course of

instruction as required by the California Education Code, or any child or day care facility licensed by the State of California. This includes a nursery school, kindergarten, Head Start program, elementary school, middle school, high school, continuation or vocational school for minors, or any special institute of education, but it does not include a vocational or professional institution of higher education primarily intended for students over eighteen (18), such as a community or junior college, college, or university.

Indoor Cultivation Guidelines

55.1.9 Indoor Cultivation for Personal Use

An individual qualified patient shall be allowed to engage in indoor cultivation of medical marijuana for the patient's personal use, as long as the cultivation occurs indoors as defined herein. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver.

Indoor medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. The indoor medical marijuana cultivation area shall not exceed 50 square feet or exceed 10 feet in height, unless a permit is granted to allow an expanded cultivation area for personal use as described in this Code;
2. The indoor medical marijuana cultivation and processing area shall be indoors, as defined herein, secured and for the exclusive use of the qualified patient;
3. Grow lights for indoor medical marijuana cultivation for personal use shall not exceed 1200 watts total, unless a special permit is granted pursuant to the requirements for an expanded cultivation area as described in this Code;
4. All electrical equipment used in the indoor cultivation of medical marijuana shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the indoor cultivation of medical marijuana is prohibited;
5. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited;
6. No odor of growing marijuana shall be allowed to escape from the indoor cultivation area. At a minimum, the indoor medical marijuana cultivation area shall be mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area;
7. From a public right of way, neighboring properties, or neighboring housing units there shall be no visual, auditory or olfactory evidence of indoor medical marijuana cultivation at the residence or other structure accessory to the residence where indoor medical marijuana is cultivated for personal use;

8. No sale, trading, or dispensing of medical marijuana is allowed at the residence or other structure accessory to the residence where medical marijuana is cultivated for personal use;
9. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
10. The qualified patient shall not cultivate medical marijuana for his or her personal use in any other location within the jurisdiction of the County of Humboldt;
11. The residence shall maintain a kitchen and bathrooms for their intended use, with at least one bedroom for every two occupants of the residence. The kitchen, bathroom, and bedrooms shall not be used primarily for indoor medical marijuana cultivation;
12. In no event may medical marijuana cultivation increase the residence's take of water from any impaired water body, as identified and listed by the State Water Resources Control Board, pursuant to section 303(d) of the federal Clean Water Act;
13. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays.
14. The structure containing the indoor medical marijuana cultivation area shall have been built with the required permits at the time of construction.
15. The indoor medical marijuana cultivation for personal use shall not adversely affect the health or safety of nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana.

55.1.10 Permit to Expand Indoor Cultivation Area for Personal Use

1. Any qualified patient or their caregiver may apply for a permit to expand the indoor medical marijuana cultivation area beyond the limitation of fifty (50) square feet and ten (10) feet in height in a residence or accessory structure pursuant to the permit process in Humboldt County Code Section 312-3.1.1. However, under no circumstances will a permit be granted for more than one hundred (100) square feet total of indoor medical marijuana cultivation area per parcel for personal use.
2. Applications for permits shall be made to the Health and Human Services Director or his or her designee pursuant to Humboldt County Code section 312-9 et seq.
3. Health and Human Services will provide an annual renewal process of the Permit upon receiving documentation of a renewed recommendation for the medical use of marijuana and an inspection that verifies that no changes have been made to the indoor cultivation site.

4. An application for a permit to expand the personal indoor medical marijuana cultivation area to an area between fifty (50) and one hundred (100) square feet shall include all information required under the permit provisions at section 312-17 et seq., as well as the following information:
 - a. An affidavit that the qualified patient or the caregiver is in compliance with this Code;
 - b. Full name of applicant
 - c. Mailing address
 - d. Age of permit applicant
 - e. Phone number, physical address and mailing address of permit applicant.
 - f. CA drivers license or Identification Card Number.
 - g. Location of cultivation assessors parcel number.
 - h. A copy of the inspection receipt issued by the Agricultural Commissioner for all weighing and measuring devices.
 - i. A copy of the qualified patient's current medical marijuana recommendation and/or state-issued medical marijuana identification card;
 - j. The square footage of the desired indoor medical marijuana cultivation area, which in no circumstances shall exceed one hundred (100) square feet;
 - k. Adequate documentation on why the indoor cultivation area needs to be expanded beyond fifty (50) square feet;
 - l. Written approval, in the form of a notarized letter, of the requested increased indoor cultivation area from the property owner;
 - m. Evidence that the cultivation area is indoors, as defined in this Code, and secured;
 - n. Evidence that the indoor cultivation area is constructed with a one hour firewall assembly of green board;
 - o. Evidence that the electrical system of the expanded indoor cultivation area is of sufficient capacity to handle the anticipated additional electrical load and was installed pursuant to a validly issued permit;
 - p. Information tending to show that the increased indoor cultivation area shall not adversely affect the health or safety of residents of the subject home or nearby residences or businesses and shall not constitute a nuisance;
 - q. A hazardous materials storage, handling, and disposal plan, if appropriate, and;
 - r. An application fee as set by the Board of Supervisor
5. The Health and Humans Services Director may request additional information from the qualified patient or their caregiver to assist in making a determination as to the requested expansion. The Health and Humans Services Director may also impose additional conditions in order to approve the permit, such as, but not limited to, specific conditions to insure that the indoor cultivation area meets the California Building Code and Fire Code, and that the expanded indoor cultivation area does not adversely affect members of the public or nearby residences or businesses.
6. A permit to allow increased indoor cultivation area shall only be approved for parcels with AP numbers.

7. A permit shall not be transferable to another individual or to another residence or accessory structure and shall only be effective for a period of one (1) year.
8. In no event may medical marijuana cultivation increase the parcels take of water from any impaired water body, as identified and listed by the State Water Resources Control Board, pursuant to section 303(d) of the federal Clean Water Act.
9. Any individual aggrieved by the decision of the Director to grant or deny a permit for increased personal use indoor medical marijuana cultivation may appeal the action to the Board of Supervisors pursuant to Humboldt County Code § 312-13.
10. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
11. The amount of lighting to be used shall not to exceed four thousand (4,000) watts.
12. Patients or their designated primary caregivers may donate excess medicine to any medical marijuana collective, cooperative, dispensing facility, or delivery service that they are a member of and be compensated for their time and expenses.

55.1.11 Permit For Indoor Member Cultivator Exemption

1. Any member cultivator may apply for a permit to expand the indoor medical marijuana cultivation area beyond the limitation of one hundred (100) square feet and ten (10) feet in height in an accessory structure pursuant to the permit process in section 55.1.11. However, under no circumstances will a permit be granted for more than two hundred (200) square feet total of indoor medical marijuana cultivation area per parcel.
2. Applications for permits shall be made to the Health and Human Services Director or his or her designee pursuant to Humboldt County Code section 312-9 et seq.
3. Health and Human Services will provide an annual renewal process of the Permit upon receiving documentation of current articles of incorporation or a current member cultivator contract for the indoor cultivation of medical marijuana and an inspection that verifies that no changes have been made to the indoor cultivation site.
4. An application for a permit to expand the indoor medical marijuana cultivation area to an area between one hundred (100) square feet and two hundred (200) square feet shall include all information required under the permit provisions at section 312-17 et seq., as well as the following information:
 - a. An affidavit that the qualified patient or the caregiver is in compliance with this Code;
 - b. Full name of applicant
 - c. Mailing address
 - d. Age of permit applicant
 - e. Phone number, physical address and mailing address of permit applicant.
 - f. CA drivers license or Identification Card Number.
 - g. Location of cultivation assessors parcel number.
 - h. A copy of a valid assessor's photo parcel map that has been obtained from the Assessor's Office.

- i. A copy of the inspection receipt issued by the Agricultural Commissioner for all weighing and measuring devices.
 - j. A county issued business license.
 - k. If the applicants intend to sell directly to qualified patients or primary caregivers, a Board of Equalization Seller's Permit will be required.
 - l. A statement whether the applicant has 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 are currently on parole or felony probation.
 - m. A copy of the applicants current medical marijuana recommendation and/or state-issued medical marijuana identification card;
 - n. Cultivators organized as a medical marijuana collective or cooperative, must show copies of articles of incorporation; or
 - o. Member cultivators must provide a written contract(s), showing that they are authorized by one or more medical marijuana collectives, cooperative, dispensing facility(ies) and/or delivery service(s) to cultivate medical marijuana for the use of the members of said facility(ies).
 - p. The square footage of the desired medical marijuana cultivation area, which in no circumstances shall exceed two hundred (200) square feet per parcel;
 - q. Notarized approval of the requested increased indoor cultivation area from the property owner;
 - r. Evidence that the cultivation area is indoors, as defined in this Code, and secured;
 - s. Evidence that the indoor cultivation area is constructed with a one hour firewall assembly of green board;
 - t. Evidence that the electrical system of the indoor cultivation area is of sufficient capacity to handle the anticipated additional electrical load and was installed pursuant to a validly issued permit;
 - u. Evidence that indoor cultivation is taking place on a parcel of one half (1/2) acre or larger;
 - v. Evidence that indoor cultivation is taking place in a permitted, detached, non-residential structure.
 - w. Proof that the applicant resides on same parcel as the indoor cultivation location.
 - x. Evidence that indoor cultivation structure is located at least fifty (50) feet from any occupied residence on a neighboring parcel.
 - y.
 - z. Information tending to show that the indoor cultivation area shall not adversely affect the health or safety of residents of the subject home or nearby residences or businesses and shall not constitute a nuisance;
 - aa. A hazardous materials storage, handling, and disposal plan, if appropriate, and;
 - bb. An application fee as set by the Board of Supervisors
5. No indoor cultivation site shall be permitted within 600 feet of a K-12 school
6. Total wattage for lighting shall not exceed 10,000 watts
7. 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.

8. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing shall be prohibited.
9. No odor of growing marijuana shall be allowed to escape from the indoor cultivation site, which shall be mechanically ventilated with a carbon filter.
10. It is prohibited for an applicant to apply for and obtain multiple indoor member cultivator exemptions for one parcel.
11. The indoor cultivation site is prohibited from discharging waste products, chemical fertilizers or pesticides into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays.
12. The indoor cultivation site shall not adversely affect the health or safety of nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and must not be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana.
13. In no event may medical marijuana cultivation increase the parcels take of water from any impaired water body, as indentified and listed by the State Water Resources Control Board, pursuant to section 303(d) of the federal Clean Water Act;
14. Indoor Cultivation site may be used for the cultivation of flowering cannabis, clones, or seed production.

55.1.12 Outdoor Cultivation for Personal Use

Any individual qualified patient shall be allowed to engage in outdoor cultivation of medical marijuana for the patient's personal use, as long as the cultivation occurs outdoors as defined herein. A primary caregiver shall only cultivate medical marijuana on the parcel where the residence of the qualified patient for whom he/she is the primary caregiver is located.

Outdoor medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. The outdoor medical marijuana cultivation area shall not exceed 100 sq ft of mature plant canopy, unless a permit is granted to allow an expanded outdoor cultivation for personal use as described in this Code.
2. The medical marijuana cultivation area shall be outdoors, as defined herein, secured and for the exclusive use of the qualified patient;
3. Lighting is not to be used in excess of six hundred (600) watts and must be shielded or downcast so as to not exceed the boundaries of the parcel
4. All electrical equipment used in the outdoor cultivation of medical marijuana shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the outdoor cultivation of medical marijuana is prohibited;
5. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited
6. The outdoor medical marijuana cultivation area must be located at least fifty (50) feet

- from any occupied residence on a neighboring parcel.
7. Medical marijuana plants shall not be visible from any public right of way.
 8. Outdoor personal cultivation area 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.
 9. No sale, trading, or dispensing of medical marijuana is allowed at the residence or other structure accessory to the residence where the medical marijuana is cultivated for personal use.
 10. The qualified patient shall reside in the residence, on the parcel, where the outdoor medical marijuana cultivation occurs;
 11. The qualified patient shall not cultivate outdoor medical marijuana for his or her personal use in any other location within the jurisdiction of the County of Humboldt
 12. In no event may medical marijuana cultivation increase the parcels take of water from any impaired water body, as identified and listed by the State Water Resources Control Board, pursuant to section 303(d) of the federal Clean Water Act.
 13. The outdoor medical marijuana cultivation area shall not adversely affect the health or safety of nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, and must not be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana
 14. Approval of cultivation from the property owner through notarized letter.

55.1.13 Permit to Expand Outdoor Cultivation for Personal Use

1. Any qualified patient or their caregiver may apply for a permit to expand the outdoor medical marijuana cultivation area beyond the limitation of one hundred (100) square feet on a qualified patients parcel pursuant to the permit process in Humboldt County Code Section 312-3.1.1. However, under no circumstances will a permit be granted for more than two hundred (200) square feet total of outdoor medical marijuana cultivation area per parcel for personal use.
2. Applications for permits shall be made to the Health and Human Services Director or his or her designee pursuant to Humboldt County Code section 312-9 et seq.
3. Health and Human Services will provide an annual renewal process of the Permit upon receiving documentation of a renewed recommendation for the medical use of marijuana and an inspection that verifies that no changes have been made to the outdoor cultivation site.
4. An application for a permit to expand the personal outdoor medical marijuana cultivation area to an area between one hundred (100) and two hundred (200) square feet shall include all information required under the permit provisions at section 312-17 et seq., as

well as the following information:

- a. An affidavit that the qualified patient or the caregiver is in compliance with this Code;
 - b. Full name of applicant
 - c. Mailing address
 - d. Age of permit applicant
 - e. Phone number, physical address and mailing address of permit applicant.
 - f. CA drivers license or Identification Card Number.
 - g. Location of cultivation assessors parcel number.
 - h. A copy of the inspection receipt issued by the Agricultural Commissioner for all weighing and measuring devices.
 - i. A copy of the qualified patient's current medical marijuana recommendation and/or state-issued medical marijuana identification card;
 - j. The square footage of the desired outdoor medical marijuana cultivation area, which in no circumstances shall exceed two hundred (200) square feet;
 - k. Adequate documentation on why the outdoor cultivation area needs to be expanded beyond one hundred (100) square feet;
 - l. Written approval, in the form of a notarized letter, of the requested increased indoor cultivation area from the property owner;
 - m. Evidence that the cultivation area is outdoors, as defined in this Code, and secured;
 - n. Information tending to show that the increased outdoor cultivation area shall not adversely affect the health or safety of residents of the subject home or nearby residences or businesses and shall not constitute a nuisance;
 - o. A hazardous materials storage, handling, and disposal plan, if appropriate, and;
 - p. An application fee as set by the Board of Supervisor
5. The Health and Humans Services Director may request additional information from the qualified patient or their caregiver to assist in making a determination as to the requested expansion. The Health and Humans Services Director may also impose additional conditions in order to approve the permit, such as, but not limited to, specific conditions to insure that the outdoor cultivation area meets the proper set backs described herein, and that the expanded outdoor cultivation area does not adversely affect members of the public or nearby residences or businesses.
6. A permit to allow increased outdoor cultivation area shall only be approved for parcels with AP numbers.
7. A permit shall not be transferable to another individual or to another residence or accessory structure and shall only be effective for a period of one (1) year.
8. Any individual aggrieved by the decision of the Director to grant or deny a permit for increased personal use outdoor medical marijuana cultivation may appeal the action to the Board of Supervisors pursuant to Humboldt County Code § 312-13.

9. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
10. The lighting shall not exceed six hundred (600) watts per one hundred (100) square feet of outdoor cultivation area and must be shielded or downcast so as to not exceed the boundaries of the parcel
11. All electrical equipment used in the outdoor cultivation of medical marijuana shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the outdoor cultivation of medical marijuana is prohibited;
12. Patients or their designated primary caregivers may donate excess medicine to any medical marijuana collective, cooperative, dispensing facility, or delivery service that they are a member of and be compensated for their time and expenses.

55.1.14 Permit for Outdoor Member Cultivator Exemption

1. Any qualified member cultivator may apply for a permit to expand the outdoor medical marijuana cultivation area beyond the limitation of two hundred (200) square feet of mature canopy pursuant to the permit process in section 55.1.13 of this Code. However, under no circumstances will a permit be granted for more than twenty thousand (20,000) square feet total of mature canopy space per parcel or per applicant.
2. Applications for permits shall be made to the Health and Human Services Director or his or her designee pursuant to Humboldt County code section 312-9 et seq.
3. Health and Human Services will provide an annual renewal process of the Permit upon receiving documentation of current articles of incorporation or a current member cultivator contract for the outdoor cultivation of medical marijuana and an inspection that verifies that no changes have been made to the outdoor cultivation site.
4. An application for a permit to expand the outdoor medical marijuana cultivation area to an area between two hundred (200) square feet and twenty thousand (20,000) square feet shall include all information required under the permit provisions at section 312-17 et seq., as well as the following information:
 - a. An affidavit that the qualified patient or the caregiver is in compliance with this Code;
 - b. Full name of applicant
 - c. Mailing address
 - d. Age of permit applicant
 - e. Phone number, physical address and mailing address of permit applicant.
 - f. CA drivers license or Identification Card Number.
 - g. Location of cultivation assessors parcel number.

- h. A copy of a valid assessor's photo parcel map that has been obtained from the Assessor's Office.
- i. A copy of the inspection receipt issued by the Agricultural Commissioner for all weighing and measuring devices.
- j. A county issued business license.
- k. If the applicants intend to sell directly to qualified patients or primary caregivers, a Board of Equalization Seller's Permit will be required.
- l. A statement whether applicant has 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 are currently on parole or felony probation.
- m. A copy of the applicants current medical marijuana recommendation and/or state-issued medical marijuana identification card.
- n. Cultivators organized as a medical marijuana collective or cooperative, must show copies of articles of incorporation or
- o. Member cultivators must provide a written contract(s), showing that they are authorized by one or more collectives, cooperatives, medical marijuana dispensing facility(ies) and/or medical marijuana delivery service(s) to cultivate medical marijuana for the use of the members of said facility(ies).
- p. The square footage of the desired medical marijuana cultivation area, which in no circumstances shall exceed twenty thousand (20,000) square feet per individual member cultivator or per parcel.
- q. Notarized approval of the requested increased outdoor cultivation area from the property owner.
- r. Evidence that the cultivation area is outdoors, as defined in this Code, and secured;
- s. Evidence identifying the legal source of water and the estimated amount to be used.
- t. Evidence that the electrical system of the outdoor cultivation area is of sufficient capacity to handle the anticipated electrical load and was installed pursuant to a validly issued permit;
- u. Evidence that outdoor cultivation is taking place on a parcel of five (5) acres or larger.
- v. Evidence that outdoor cultivation is located at least seventy-five (75) feet from any occupied residence on a neighboring parcel.
- w. Information tending to show that the outdoor cultivation area shall not adversely affect the health or safety of residents of the subject home or nearby residences or businesses and shall not constitute a nuisance;
- x. Describe the measures that will be taken to prevent erosion or contaminated run off into any stream, creek or river, or an explanation of why such measures are not necessary.
- y. A hazardous materials storage, handling, and disposal plan, if appropriate, and;
- z. An application fee as set by the Board of Supervisors

5. The outdoor medical marijuana cultivation and processing sites of member cultivators

shall be in conformance with the following standards:

- a. Member cultivators may apply for and receive multiple permits for separate land parcels with accumulative square footage not to exceed twenty thousand (20,000) square feet.
- b. Each permit shall be subject to all current and future permit fees, application fees and inspection fees.
- c. The outdoor medical marijuana cultivation shall not adversely affect the health or safety of nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, smoke, traffic, vibration, or other impacts, and must not be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana.
- d. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
- e. The outdoor medical marijuana cultivation area must be located at least seventy-five (75) feet from any occupied residence on a neighboring parcel.
- f. Medical marijuana plants will not be visible from any public right of way.
- g. Lighting is not to be used in excess of six hundred (600) watts per one hundred (100) sq ft and must be shielded or downcast so as to not exceed the boundaries of the parcel.
- h. If diesel generators are proposed to be used on site, a) a detailed description of the proposed methods of storage; and b) delivery and containment of the diesel fuel must be included with this application. (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.)
- i. Outdoor personal cultivation area 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 member cultivator 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.

55.1.15 Fee Schedules for Cultivation Exemptions

1. **Permit to Expand Personal Use Indoor Cultivation Area**
 - a. **Application Fee – \$100**
 - b. **Inspection Fees – all inspections deemed necessary for the application and renewal process shall be paid by the applicant**
2. **Permit For Indoor Member Cultivator Exemption**
 - a. **Application Fee - \$100**
 - b. **Permit Fee - \$1000**
 - c. **Inspection Fees – all inspections deemed necessary for the application and renewal process shall be paid by the applicant**
3. **Permit for Outdoor Member Cultivator Exemption**
 - a. **Application Fees including Pre-site Verification Inspection \$1500**

- b. Permit Fee - \$50 per one hundred (100) square feet increment
- c. Inspection Fees – all inspections to verify electrical code, diesel generator compliance and mature plant canopy compliance will be paid for by the applicant

55.1.16 Medical Marijuana Dispensing Facilities and Delivery Services

This section applies to all medical marijuana dispensing facilities and delivery services that provide medical marijuana by operating a store front, warehouse, indoor cultivation facility and/or storage facility for the maintenance of records, processing, packaging and storage of medical marijuana.

1. Medical marijuana dispensing facilities and delivery services shall only be allowed in specifically enumerated zones with an approved special use permit, and a valid business license. Medical marijuana delivery services shall only be allowed in specifically enumerated zones with special use permits and a valid mobile business license. Zoning districts where a medical marijuana cooperative, collective or delivery service may be located are C-1, C-2, C-3, CG, CH, CN, MB, ML, MH, and MG.
2. The fact that an applicant possesses other types of state or County permits or licenses does not exempt the applicant from the requirement of obtaining a special Use Permit from the County of Humboldt to operate a medical marijuana dispensing facility or delivery service within the jurisdiction of the County.
3. Notwithstanding any other provision of the County code, an existing dispensing facility or delivery service operating with a special use permit and a business license approved by the County as of the effective date of this ordinance shall be brought into full compliance with the provisions of this Code within one (1) year of the effective date of the ordinance establishing this Code.
4. All of the following specific requirements must be met in order for a special use permit for a medical marijuana dispensing facility or delivery service to be considered by the Planning Commission:
 - (1) Preparation of a hazardous materials storage, handling, and disposal plan approved by the Division of Environmental Health.
 - (2) A proposed medical marijuana dispensing facility or delivery service located in the coastal zone must also apply for and receive a coastal development permit as set forth in the Humboldt County Code and state law.
 - (3) The Planning Commission shall consider the potential impacts and cumulative impacts of the proposed medical marijuana dispensing facility or delivery service to the community area as a whole and specifically on the following existing uses located within a 500 foot radius, regardless of whether those existing uses are within the jurisdiction of the County:
 - a. Churches, as defined herein;
 - b. Schools, playgrounds, public parks, libraries, licensed day care facilities, and places where children congregate, as defined herein;
 - c. Residential treatment facilities, as defined herein; and

d. The cumulative impacts resulting from the addition of another marijuana dispensing facility or delivery service when there are others within a five hundred (500) foot radius of the proposed new facility.

e. The Planning Commission shall consider the potential impacts and cumulative impacts of the proposed medical marijuana dispensing facility or delivery service to the residential neighbors located within a three hundred (300) foot radius.

(4) The facility must be secured against unauthorized entry.

(5) No medical marijuana dispensing facility or delivery service shall be located within a 600-foot radius of the property line of a school [Health & Safety Code section 11362.768 (b)].

(6) Operations Manual

Notwithstanding any other regulations or requirements for submitting an application for a special use permit, a medical marijuana dispensing facility or delivery service shall submit to the Planning Commission an operations manual which provides for the following:

- a. Authorization for the County, its agents, and employees, to seek verification of the information contained within the application and the operations manual;
- b. A description of the staff screening process including appropriate background checks;
- c. The hours and days of the week the medical marijuana dispensing facility or delivery service will be open;
- d. Text and graphic materials showing the site, floor plan and facilities of the medical marijuana dispensing facility or delivery service. The material shall also show structures and land uses within a 500 foot radius;
- e. A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;
- f. A description of the screening, registration and validation process and procedures for qualified patients and caregivers;
- g. A description of qualified patient records acquisition and retention procedures and policies;
- h. The processes, procedures and inventory controls for tracking the medical marijuana that comes in and goes out of the dispensing facility or delivery service;
- i. Description of measures taken to minimize or offset energy use from the activities of the dispensing facility or delivery service;
- j. Description of chemicals stored, used and any effluent discharged as a result of the activities of the dispensing facility or delivery service;
- k. The procedure, documentation, and notice process for assuring the safety and quality of all medical marijuana.

- l. Any other information as may be requested by the County, its employees, and/or by the Planning Commission.

(7) Operating Standards

Notwithstanding any other regulations or requirements, medical marijuana dispensing facility or delivery service shall comply with all of the following operating standards:

- a. Medical marijuana dispensing facility or delivery service may not employ any persons who have been convicted of a violent felony
- b. No dispensing of medical marijuana to an individual qualified patient shall be permitted more than twice a day;
- c. The hours of operation of a medical marijuana dispensing facility or delivery service shall be no earlier than 10 a.m. and no later than 7 p.m.
- d. Medical marijuana dispensing facility or delivery service shall only provide medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana dispensing facility or delivery service shall verify that the physician's recommendations of their members are current and valid on a regular basis;
- e. Medical marijuana dispensing facilities shall display their client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the dispensing facility. A copy of the client rules and/or regulations shall be provided to the qualified patient by the medical marijuana delivery service;
- f. Each building entrance to a medical marijuana dispensing facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana or medical marijuana edibles on the premises or in the vicinity of the dispensing facility is prohibited unless specifically authorized by the Special Use Permit.
- g. Each building entrance to a medical marijuana dispensing facility shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and they are accompanied by their parent or legal guardian;
- h. A copy of the inspection receipt issued by the Agricultural Commissioner for all weighing and measuring devices.
- f. No medical marijuana delivery service shall provide medical marijuana to any qualified patient or holder of a medical marijuana recommendation who is under 18 unless their parent or guardian has previously given written permission that is on file with the delivery service and that parent or guardian is present to accept the delivery of medical marijuana;
- g. A record identifying the permitted source or sources of all marijuana currently on the premises of the medical marijuana dispensing facility, or delivery service or that has been on the premises during the two year period prior to the current

date, shall be maintained and made available at all times for inspection by the Department of Health and Human Services.

h. All marijuana at the medical marijuana dispensing facility, or delivery service shall be physically labeled with the species or strain of the marijuana, and the monetary amount to be charged to a member of the cooperative, collective, or delivery service for the medical marijuana as reimbursement for the costs of cultivation, overhead, and operating expenses.

i. All signs for medical marijuana cooperatives, collectives, and delivery services must comply with sections 313-87.3 and 314-87.2 of the County Zoning Regulations;

j. Medical marijuana dispensing facilities, and delivery services shall permit the distribution to their members of seeds, live plants, starts, and clones only if allowed by an approved Special Use Permit;

k. An up-to-date inventory of all hazardous materials stored and used onsite shall be maintained on the premises of the medical marijuana dispensing facility and delivery service, with a copy of this inventory provided to the Humboldt County Division of Environmental Health;

l. Medical marijuana dispensing facility and delivery services shall maintain all necessary permits, and pay all required taxes and fees. Medical marijuana dispensing facilities and delivery services shall also provide invoices to vendors to ensure vendor's tax liability responsibility,

m. Medical marijuana dispensing facilities and delivery services shall implement the policies and procedures as outlined in their Operations Manual as approved by the Planning Commission, and;

n. Medical marijuana dispensing facilities and delivery services shall comply with any and all conditions of their Special Use Permit;

o. Any medical cannabis not grown on site by the medical marijuana dispensing facility, or delivery service must be obtained from permitted member cultivators.

p. A medical marijuana dispensing facility or delivery service may not obtain a SUP to cultivate on site for more than 25% of their active member base not to exceed one hundred fifty thousand (150,000) watts of lighting.

(8) Performance Review Reports

- a. Medical marijuana dispensing facilities and delivery services shall submit a "Performance Review Report" on an annual basis for review and approval by the Health and Human Services Director. This annual "Performance Review Report" is intended to identify the effectiveness of the approved Special Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. In the event the Health and Human Services Director identifies problems with the medical marijuana dispensing facility or delivery service that could potentially lead to

revocation of the special use permit pursuant to section 312-14 of the Humboldt County Code, the Health and Human Services Director may require the submittal of more frequent "Performance Review Reports".

- b. The medical marijuana dispensing facility or delivery service shall be inspected by the Health and Human Services Director or his/her designee on an annual basis, or more frequently as requested by the Planning Commission, to determine if the dispensing facility or delivery service is in compliance with its special use permit and Operations Manual. After payment of the inspection fees as indicated in the following section, a copy of the results from this inspection shall be given to the medical marijuana dispensing facility or delivery service for inclusion in their "Performance Review Report" to the Health and Human Services Director.
 - c. Inspection and review fees pursuant to the County's adopted schedule of fees and charges, as amended from time to time by the Board of Supervisors, shall be paid by the medical marijuana dispensing facility or delivery service and accompany the "Performance Review Report" for costs associated with the inspection and review of the report by Health and human services and the Planning Commission.
 - d. Non-compliance by the medical marijuana dispensing facility or delivery service in allowing the inspection by the above-mentioned County personnel, or refusal to pay the required inspection and review fees, or non-compliance in submitting the annual "Performance Review Report" for review by the Health and Human Services Director shall be deemed grounds for a revocation of the special use permit and/ or subject the holder of the special use permit to the penalties outlined in this Code, above.
- (9) A special use permit shall be revoked or modified according to Humboldt County Code Section 312-14 (Revocation Procedures). Permit revocation or modification shall be sought for non-compliance with one or more of the requirements listed in this Code, for failure to comply with the requirements of the Humboldt County Certified Unified Program Agency (CUPA), or for the grounds listed in Section 312-14.1.
- (10) The rights of an approved Special Use Permit to operate a medical marijuana dispensing facility or delivery service may be transferred to another upon approval by the Planning Commission after a noticed public hearing.

55.1.17 Medical Marijuana Testing Facilities

- 1. Testing facilities at which no cultivation, processing, or distribution of medical marijuana occurs shall be allowed in any zone in which medical laboratories and medical testing facilities are permitted. Medical marijuana laboratories shall be subject to all the regulations and standards applicable to medical laboratories in the Humboldt County Code.

55.1.18 Medical Marijuana Business Offices

- 1. Business offices for a medical marijuana dispensing facility or delivery service at which no cultivation, processing, storage, handling, or distribution of marijuana in any form occurs shall be allowed in any zone in which business offices are allowed. Medical

marijuana business offices shall be subject to all the regulations and standards applicable to business offices in the Humboldt County Code.

55.1.19 Preparation Guidelines for Medical Marijuana Edibles

1. No medical marijuana edibles requiring refrigeration or hot-holding shall be manufactured for sale or distribution at a medical marijuana dispensing facility or delivery service, due to the potential for food-borne illness. Exemptions may be granted by the Humboldt County Department of Public Health on a case-by-case basis. For such exempted edible marijuana products, DPH may require a HACCP (Hazard Analysis and Critical Control Points) plan before approving distribution of such medical marijuana products at medical marijuana dispensing facilities and delivery services. Such products requiring a HACCP plan may include ice cream and other dairy products.
2. Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at medical marijuana dispensing facilities and delivery services.
3. (Items noted in this section are advisory only, as DPH does not intend to regulate edible marijuana production occurring in one's home.) Preparation may be completed in a home-type kitchen equipped with a sink available for hand washing (this sink may be a dishwasher sink), liquid soap, and paper towels. No other food preparation should take place during the production of edible marijuana products, in order to avoid cross-contamination. During preparation, children and pets should not be in the kitchen/preparation area. Clean and sanitize all utensils, equipment, and food contact surfaces before and after preparation. Equipment and food contact surfaces should be in good, cleanable condition. Ingredient storage areas should be kept clean and vermin-free.
4. All items shall be individually wrapped at the original point of preparation. Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of marijuana in the package. A warning that the item is a medication and not a food must be distinctly and clearly legible on the front of the package. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children. The label must also state that the product contains medical marijuana, and must specify the date of manufacture.
5. Packaging that makes the product attractive to children or imitates candy is not allowed. Any edible marijuana product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the medical marijuana dispensing facility. Deliveries must be in properly labeled opaque packages when delivered to the patients.
6. Individuals conducting the manufacturing or sale of products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging the edible marijuana products.

7. In order to reduce the likelihood of food borne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible marijuana products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Anyone who has sore or cuts on their hands must use gloves when preparing and handling edible marijuana products.
8. Edible marijuana products for sale or distribution at a medical marijuana dispensing facility or a delivery service must have been prepared by a member of that dispensing facility or delivery service. No non-member edible marijuana products are allowed for sale or distribution at a dispensing facility or through a delivery service.
9. A patient/caregiver who produces edible marijuana products that are sold through more than one dispensing facility or delivery service in Humboldt County must become a State certified food handler. If more than one person is involved in producing edible marijuana products at one home or facility, only one person needs to be certified. The valid certificate number of the member who has prepared the edible marijuana product must be on record at the dispensing facility or with the delivery service where the product is sold or distributed, and a copy of the certificate kept on-site, or made available during inspection if kept off-site.

DRAFT

**HUMBOLDT COUNTY PLANNING COMMISSION
STAFF REPORT**



COMMUNITY DEVELOPMENT SERVICES
PLANNING DIVISION
COUNTY OF HUMBOLDT

<http://co.humboldt.ca.us/CDS/Planning>

DATE: December 23, 2010
TO: Humboldt County Planning Commission
FROM: Kirk Girard, Director of Community Development Services
SUBJECT: Zoning Ordinance Revisions – Medical Marijuana Uses

The attached staff report has been prepared for your consideration of the following Zoning Ordinance revisions and Local Coastal Program Amendments at the public hearing on January 6, 2011. The staff report includes the following:

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Agenda Item Transmittal Form
Staff Recommendation and Executive Summary

Attachments

- Attachment 1: Staff Analysis of Required Findings
- Attachment 2: Jurisdictional Regulatory Comparison Matrix
- Attachment 3: Applicable Policy & Law
- Attachment 4: Potential Collective sites within McKinleyville, Garberville/Redway
and unincorporated portions of Eureka, Arcata, Blue Lake, and Fortuna
- Attachment 5: Draft Medical Cannabis Regulations

Please contact Steve Lazar, Planner I, at 268-3741 if you have any questions about the scheduled public hearing item

AGENDA ITEM TRANSMITTAL

TO: HUMBOLDT COUNTY PLANNING COMMISSION
FROM: Kirk A. Girard, Director of Community Development Services

HEARING DATE: January 6, 2010	SUBJECT: Zoning Ordinance Revisions – Medical Marijuana Uses	CONTACT: Steven Lazar
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Before you is the following:

PROJECT: This item involves consideration of amendments to the Zoning Ordinance and Local Coastal Program (LCP) to provide for the regulation of some Medical Marijuana Uses. The Medical Marijuana Land Use Code (MMLUC) is intended to address residential cultivation of medical marijuana for personal use, and operation of medical marijuana collectives, cooperatives and delivery services. If adopted, these amendments to the Zoning Regulations will create new Humboldt County Code Sections 313-55.1 et seq. of Title III, Division I, Chapter 3, Section B, Part I (Coastal Zoning Regulations) and 314-55.1 et seq. of Title III, Division I, Chapter 4, Section B, Part I (Inland Zoning Regulations).

These amendments will regulate the residential cultivation of medical marijuana for personal use and affect the location(s) of medical marijuana collectives, cooperatives, and delivery services within the unincorporated areas of Humboldt County, including the Coastal Zone.

PROJECT LOCATION: The implementing Ordinance and LCP Amendments apply to all the unincorporated areas of the County.

PRESENT PLAN DESIGNATIONS: n/a

PRESENT ZONING: n/a

ASSESSOR PARCEL NUMBERS: n/a

APPLICANT
n/a

OWNER(S)
n/a

AGENT
n/a

ENVIRONMENTAL REVIEW:

- Amending the text of the Humboldt County Zoning Regulations is a "project" for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061(b)3, there is a 'general rule' that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Additionally, the LCP Amendments are statutorily exempt from environmental review per Section 15265 of the California Environmental Quality Act (CEQA) Guidelines

STATE APPEAL STATUS:

- The LCP amendments must be certified by the California Coastal Commission.

MAJOR ISSUES:

- None

STAFF RECOMMENDATIONS AND EXECUTIVE SUMMARY
Amendments to the Zoning Regulations and Local Coastal Program
Medical Marijuana Land Use Code (MMLUC)

STAFF RECOMMENDATIONS:

Meeting of January 6, 2011 (PART A)

1. Open the public hearing item and receive a staff report.
2. Receive public comment.
3. Determine whether a special workshop is warranted
4. Continue to a date certain to provide for additional public review and comment.

Future Meeting(s) To Be Determined (PART B)

5. Close the public comment portion of the meeting and deliberate on the proposed implementing ordinances and LCP Amendments, making changes if necessary;
6. Make the following motion to approve the item:
"I move to make all of the required findings, based on evidence in the staff report, and to approve the proposed implementing ordinances and LCP Amendments (subject to the following modifications...)."

EXECUTIVE SUMMARY: This item involves consideration of amendments to the Zoning Regulations concerning the regulation of Medical Marijuana Uses. The Medical Marijuana Land Use Code (MMLUC) is intended to address residential cultivation of medical marijuana for personal use as well as the operation of medical marijuana collectives, cooperatives and delivery services. If adopted, these amendments to the Zoning Ordinance will create new Humboldt County Code Sections in the Coastal and Inland Zoning Regulations. Because the Coastal Zoning Regulations are an implementation of the Local Coastal Program (LCP), changes to the Coastal Zoning Regulations constitute an amendment to the LCP requiring certification by the California Coastal Commission before they become effective.

Background / Regulatory Need

The Zoning Regulations are currently silent with regard to the uses associated with Medical Cannabis. §311-4 of the Zoning Regulations "Interpreting the Regulations if a Provision Is Unclear" authorizes the processing of a Special Permit to determine where and when a use is principally or conditionally permitted if there is ambiguity in the regulations. In 2004, during review of a proposal to establish a Willow Creek clinic engaged in the on-site indoor cultivation and distribution of medical cannabis on a commercially-zoned parcel (SP-03-146 Humboldt Patient Resource Center 'HPRC'), the Board of Supervisors determined that facilities engaged in the cultivation and distribution of medical cannabis are a unique form of land use to be distinguished from "medical offices and clinics" and shall require a Conditional Use Permit in all cases. Though the Special Permit for 'HPRC' was approved by the Board of Supervisors on December 7, 2004, operations were never initiated and the permit eventually expired.

During the last two years alone, the Community Development Services Department has been contacted by over 40 individuals and organizations interested in establishing Medical Cannabis Collectives within the unincorporated portions of the Humboldt County.

Additionally, the cultivation of cannabis within residences continues to provide challenges for local officials. "Grow houses" have become an unfortunate byproduct of the decriminalization of Medical Marijuana under the Compassionate Use Act. The term generally refers to a home that has been devoted entirely to marijuana cultivation and processing, often resulting in the complete elimination of residential use. Grow houses "remove valuable housing stock, degrade neighborhood aesthetics, and undermine neighborhood character and unity"¹. Illegal electrical modifications and installations associated with indoor grows often present a serious fire hazard; while irregularly high levels of moisture and mold have been known to ruin entire houses. Law enforcement reports that burglaries, robberies, and violent crimes may occur as a result of the presence of grow houses.

See Attachment 3 for a summary of the various state and local laws and regulations applicable to the cultivation and use of medical cannabis in Humboldt County.

¹ May 5-7, 2010; League of California Cities Spring Conference | City of Arcata; City Attorney's Dept., City of Arcata Zoning Standards for Medical Marijuana: An example of comprehensive regulation

City of Arcata

The City of Arcata was the first local government in Humboldt County to adopt an ordinance specifically intended to regulate indoor residential cultivation and collective-based distribution of medical marijuana. Effective in December of 2008, the Arcata medical marijuana ordinance set clear limits and rules for personal and collective cultivation, as well as distribution. Facing city-wide impacts from large-scale cultivation in residential neighborhoods, the Arcata Ordinance advanced a number of concepts including: restricting the size (50 ft.²) and height (max 10 feet) of an the area dedicated to personal use cultivation, limiting the amount of energy used by associated lighting (1,200 watts), prohibiting cultivation and sale as a 'Home Occupation', requiring that the "qualified patient" reside in the residence where cultivation occurs, and requiring conformance with the Building Code while restricting conversion of the kitchen, bathrooms, and primary bedrooms. Unique to the Arcata Ordinance is the restriction of 'personal use' cultivation to "detached single-family residential properties". The Arcata regulations established an exception process by which a qualified patient could request to enlarge the allotted cultivation area (up to 100 ft.²). The Arcata regulations also set various requirements for Collectives including: being subject to a Conditional Use Permit, setting a cap on the number that could be permitted in the City (a maximum of 4 collectives until any go out of business; then ultimately 2), and prohibiting remuneration to qualified patients who furnish a collective with excess personal cannabis. The Arcata regulations were the first locally to establish separation standards for collectives and cooperatives. The Ordinance suggests that collectives be located 300 feet from residential zoning districts, 500 feet from any public parks, playgrounds, day care, or schools, and 500 feet from any other medical cannabis collective distribution facility. Lastly, the Arcata Ordinance set application requirements for Collectives, standard operational rules, and required that they submit an annual performance review report to the Community Development Director.

City of Eureka

In September of this year (9/3/10), the City of Eureka became the second local government to adopt an ordinance regulating indoor 'personal use' cultivation and collectives. The Eureka Ordinance utilized many of the same techniques and requirements as the Arcata Ordinance; notable exceptions being: larger separation requirements (1000 feet from schools, parks, and public facilities and 1000 feet from another collective or distribution facility), an increase in number of permitted distribution facilities (10), absence of the annual performance review report, and refusal to allow transfer of a Collective's Conditional Use Permit. The Eureka Ordinance went on to clarify that Offices and Laboratories associated with medical cannabis collectives or testing facilities would be authorized wherever "Offices" or "Medical Labs" are already permitted by the Zoning Regulations (without requiring a Conditional Use Permit, so long as no cultivation, or distribution of cannabis will occur at the office or lab site). Additionally, the Eureka Ordinance opened the door to "Delivery Services" provided that the service is associated with a permitted distribution facility located within City limits where the Conditional Use Permit specifically evaluated delivery as a component of collective operations. The City of Eureka's Ordinance gives preference to the Collective model where each Individual Collective limits their distribution to cannabis specifically grown by the collective at a centralized on or off-site cultivation facility. 8 of the 10 permitted distribution facilities must follow this model. The remaining 2 permitted distribution facilities are allowed to operate without a centralized cultivation facility and would presumably deal exclusively with excess medical cannabis grown for personal use by collective members at off-site locations. This emphasis on closed-loop cultivation represents a regulatory evolution of sorts and growing concerns developing over issues surrounding off-site grows in residential areas.

See Attachment 2 for a matrix which compares and contrasts the Arcata, Eureka, and [Draft] Humboldt County Medical Cannabis Ordinances.

Prior County Regulation of Medical Cannabis

DA Prosecution Guidelines

The Humboldt County District Attorney's *Prosecution Guidelines* were issued on February 14, 2003 and provided guidance regarding situations where qualified patients engaged in cultivation for personal medical use would not be prosecuted by the District Attorney's Office. The *Guidelines* also were meant to assist law enforcement personnel who encounter possession and cultivation situations.

Ordinance 2328

Ordinance 2328 was adopted by the Humboldt Count Board of Supervisors on August 17, 2004 and provided guidelines to local patients, their caregivers and law enforcement regarding the implementation of Proposition 215 and SB 420. The ordinance also increased the default State limits for the size of areas

devoted to cultivation for personal medical use, number of plants, and annual possession amounts for qualified patients and designated “primary caregivers”.

Humboldt County Draft Medical Marijuana Land Use Code (MMLUC)

The draft amendments to the Zoning Regulations (MMLUC) resemble both the City of Arcata and the City of Eureka’s Ordinances. What is currently being presented represents Phase I of the effort. Phase I covers much of the same territory addressed in the Arcata and Eureka ordinances (Cultivation for Personal Use, Cooperatives/Collectives, and Delivery Services). Staff intends for Phase II to follow and this phase will address issues that are somewhat unique to the unincorporated portions of the County: large-scale outdoor cultivation, indoor industrial-scale cultivation sites, impacts to impaired watercourses affected by water withdrawal linked to outdoor cultivation, whether cultivation should be tied to distribution, and other related issues.

Important components of the MMLUC include each of the following subjects:

Regulation of Indoor Cultivation for Personal Use by Qualified Patients

The MMLUC contains many of the same provisions for indoor cultivation as the Arcata and Eureka Ordinances. Permitted by right in residential zones is the use of up to 50 ft.² of interior area (up to 10 feet in height). Exceptions to this are processed as a special permit and can allow cultivation to occur in up to a 100 ft.² of indoor space or within an area greater than 10 feet in height. Unlike Arcata’s Ordinance, the MMLUC (and Eureka Regulations) allow cultivation to occur within multi-family residential settings, as long as the cultivation does not adversely affect neighboring residential units or near-by parcels.

Cooperatives and Collectives

The MMLUC contains many of the same basic provisions for Collectives and Cooperatives as are found in the Arcata and Eureka Ordinances. Additionally, the MMLUC includes many of the same performance standards, application requirements, and operational restrictions of both of the two cities’ Ordinances. A few notable changes not mentioned elsewhere are the slightly different “soft limits” for separation from certain neighboring land uses (500’ from residential zones, public park/playground/day care, and other collectives), as well as reference to a new state law requiring dispensaries to be 600 feet from a school teaching any grade between K-12. Unlike the Eureka Ordinance, the MMLUC (and Arcata regulations) gives the Planning Commission the authority to allow a “transfer” of a Collective’s Conditional Use Permit to another party, although transfer of the Conditional Use Permit to a new location is not permitted.

Unlike Arcata, there are no ‘grandfathered’ collectives operating in the county at the time of the considerations of these regulations. The only Collective (in the unincorporated portions of the County) currently in operation at this time is located in the Myrtle town area and is operated by The Humboldt County Collective (THCC) –though two applications are currently before your commission for consideration (Hummingbird Healing Center (CUP-09-14) –located on Myrtle Avenue [approximately 150 feet from the THCC facility] and Redwood Legacy (CUP-09-13) –located in the Garberville area. A standard Condition of Approval has been applied to all 3 Collective’s requiring that each Collective “...come into compliance with any future County Ordinance regulating Medical Cannabis or related activities, within 6 months of the Ordinance’s adoption”.

Delivery Services

The Eureka Medical Cannabis regulations were the first to anticipate and address local delivery of cannabis to Qualified Patients. Under the Eureka Ordinance, Delivery Services must be associated with one of the 6 Conditional Use Permits issued for a Collective engaged in cultivation and/or distribution. Delivery services also must be managed by a Collective and identified in the Plan of Operations approved in association with the Conditional Use Permit. The Humboldt County MMLUC treats Delivery Services slightly differently. As the MMLUC is currently drafted, a Delivery Service is merely a collective that is exclusively “delivery-based” (i.e. no storefront distribution facility), rather than an off-shoot of or service provided by a store-front collective.

Concept of the ‘Closed Loop’

The Draft MMLUC leaves the door open to Collective models that do not include centralized large-scale cultivation. Of the 3 Conditional Use Permit applications received by the Department thus far, all involve the redistribution (buying and selling) of medical cannabis grown at small-scale off-site locations; with 2 of the 3 (THCC and Hummingbird Healing Center) relying exclusively on off-site non-centralized cultivation. In each case, Conditions of Approval have been applied requiring that all “patient providers” (grower-

members) agree to third-party certification of each associated off-site cultivation facility. This is intended to insure that all cultivation is being performed in accordance with applicable laws and policy.

Many jurisdictions are moving toward requiring that Collectives rely exclusively on centralized grow facilities to help reduce and concentrate impacts in areas where large-scale cultivation can occur in a safe and secure manner while avoiding negative impacts to adjacent land uses. This is the basis for the 'closed loop' concept where control over un-authorized diversion, price, and the site of the grow facility is improved. On the other hand, some argue that centralized cultivation models are unable to provide the flexibility to provide the diversity of cannabis species/strains needed to maximize the benefits of the medicine to members with a diverse range of medical conditions and needs. Collective operators and members will point out that some types of cannabis may prove more effective in providing relief for certain conditions (eg. glaucoma, intestinal disorders, etc.) while other types may prove better at reducing nausea associated with cancer treatment or other ailments and illness. The effectiveness of third-party certification remains to be seen and will likely inform which model should be supported.

Mapping

Attachment 4 includes maps showing the location and distribution of various population centers throughout the County and potential zones where Collectives and Cooperatives may be established. Using Geographic Information System (GIS) Data, staff was able to determine that approximately 1,072 parcels in the county contain the correct zoning to permit use by a Collective, Cooperative, or Delivery Service, though only 155 parcels could conform to the recommended separation distances (500' from residential neighborhoods, churches, playgrounds, public parks, libraries, licensed day care, residential treatment facilities, and other collectives) identified in the draft County regulations. For this reason, the Ordinance approaches these separation requirements as "soft limits" in order to provide greater flexibility for the siting of cultivation and distribution facilities (given the limited number of parcels that would qualify under a "hard limit" scenario).

Specific Issues for Discussion by the Planning Commission

In drafting this first phase of the MMLUC, staff identified a number of issues that require input from the Planning Commission and the Board of Supervisors. A non-exclusive list follows:

- 1) The number of collectives, cooperatives or delivery services that should be allowed in the County. Staff inserted 12 as a place holder, pending input from the Planning Commission and the Board. In the current draft, delivery services are classified as a type of collective or cooperative and are subject to the same regulations and limitations. This could be changed to expressly disallow delivery services, but allow collectives or cooperatives to deliver medical marijuana to their patients as part of their services or the draft could be changed to expressly allow delivery services and any other type of delivery of medical marijuana by a collective or cooperative. If the Commission prefers to keep delivery services as they currently are in the draft ordinance, they may wish to direct staff to draft regulations and CUP requirements that are more tailored to and specific for the delivery service model
- 2) The draft ordinance is silent on how medical marijuana collectives, cooperative or delivery services acquire their marijuana. Shall it stay that way pending phase II of the ordinance or shall we specify that members of the collective, cooperative or delivery service may trade their excess medical marijuana to the dispensary for allocation to other members, but that the patient or caregiver trading in the medical marijuana may receive no monetary remuneration, similar to Arcata's ordinance? Another option is to allow for a closed-loop system as described above, wherein the medical marijuana collective, cooperative or delivery service does their own on- or off-site cultivation of medical marijuana, which they then provide to their members. A final option is to disassociate the medical marijuana cultivation and processing function from the distribution function and require each use to apply for a CUP, be inspected regularly, etc.
- 3) The sale, trade or transfer of medical marijuana edibles by a dispensary and the manufacturing of an edible by an individual in their home for sale, trade or transfer is currently prohibited in the draft ordinance. The reason for this is that there is currently no state or local law that gives the Division of Environmental Health (DEH) the authority to inspect facilities that manufacture edibles for safe food handling practices, cleanliness and sanitation. Additionally, edibles are often packaged in ways that may appeal to children, are not clearly labeled as containing marijuana (i.e. cookies or brownies in a plain brown paper bag), fail to state if nuts or other allergens are present in the edible or present in the facility where the edible was made, and fail to indicate the strain or amount of marijuana in the edible. The draft ordinance does not prevent individuals or their caregivers from making their own edibles or consuming edibles. If the Commission wants edibles to be available for sale, trade or transfer in the County, one option is to follow the lead of the City and

55.1.11(1)

55.1.11(6)i

County of San Francisco, which has enacted its own safe-handling, inspection and packaging regulations and inspection program for edibles and that is an option for the County.

- 4) 55.1.8 Currently, the draft ordinance allows residential cultivation of medical marijuana for personal use to be grown outdoors in a greenhouse, as long as it can be secured and will not result in negative impacts upon the neighboring occupants or land-owners. This can be deleted if the Commission so wishes.
- 5) 55.1.10 (1) A special permit to allow residential cultivation of medical marijuana up to 100 sq. ft. or over 10 ft. in height is only good for one year. This is tied to the length of time a recommendation for medical marijuana is generally good for. One option the commission may wish to consider is to provide for an administrative extension of the special permit upon receipt of evidence of a renewed recommendation for the medical use of cannabis and there has been no change in the findings on which the original Special Permit for the exception was granted.
- 6) 55.1.8 Staff inserted virtually all of the non-residential zones as potential sites for medical marijuana collectives, cooperatives or delivery services as a place holder. It is anticipated that the Commission may recommend removing one or more of the potential non-residential zones from the draft ordinance
- 7) 55.1.11(4) The draft ordinance gives collectives, cooperatives or delivery services that are operating lawfully with a conditional use permit at the time the ordinance goes into effect one year to come into compliance with the ordinance. The Commission may elect a different time frame. It should be noted that Conditions of Approval associated with each of the 3 current collective proposals require Ordinance compliance within 6 months of adoption.
- 8) 55.1.11(4) The draft ordinance allows a Collective's approved Conditional Use Permit to be transferred to a new Collective-based organization at the same location subject to the review and approval by the Planning Commission as a modification to the previously approved Conditional Use Permit. The City of Eureka specifically prohibits transfer of approved CUP's and requires that a new application be submitted. The Commission could elect to take this approach to transfers.
- 9) 55.1.11(5)3(e) The draft ordinance requires dispensaries to be located at least 600 feet from any school teaching a grade between K -12. However, the ordinance also says that the Commission should consider the potential and cumulative impacts, on the community and specific uses, such as residential, churches, playgrounds, etc., of allowing a dispensary to be within 500 feet of the aforementioned uses. The Commission could choose to expand or contract this distance, or the Commission could contemplate hard distance limits for some of the mentioned uses. However, the Commission must be careful in applying any hard distance limits that would foreclose opportunities to establish a collective within a community.
- 10) 55.1.11(5)7 The draft ordinance requires the dispensary to submit annual performance review reports to the Planning Commission for review and approval. If, after reviewing the annual report, the Planning Commission determines that the medical marijuana collective, cooperative or delivery services is not operating in compliance with their CUP, the provisions of the draft ordinance or are in violation of any other grounds for revocation in HCC 312-14.1, the Planning Commission may ask for more frequent performance reviews or they may initiate proceedings to revoke the CUP pursuant to HCC 312-14.2. This could be changed to annual reviews for the first 1 or 3 years of the CUP and then the performance reports could be reviewed and approved by the Community Development Services Director thereafter.
- 11) The draft ordinance provides explicit limits for residential cultivation in the home by qualified patients. "Grow Houses" have had a negative impact on residential neighborhoods and the draft ordinance seeks to address this problem by permitting residential cultivation while prohibiting nuisance-related impacts. An attendant increase in demand on code enforcement staff will likely accompany these proposed changes. As such, the Commission may wish to consider establishing application-specific fees for Conditional Use Permits and Special Permits associated with Collective-based Distribution facilities or Exception Requests (> 50 ft.² residential grows) to help fund associated Code Enforcement efforts.

CEQA Compliance

Amending the text of the Humboldt County Zoning Regulations is a "project" for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061(b)3, there is a 'general rule' that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

One of the primary purposes of the Medical Marijuana Land Use Code (MMLUC) is to reduce negative impacts to the community from cultivation in residential areas. Given that these changes to the Zoning Regulations will require a Special Permit for personal cultivation in excess of the limits to be established and a Conditional Use Permit for all proposals to collectively cultivate and distribute medical cannabis, and because each Conditional Use Permit is subject to CEQA review thus assuring that on an application-by-application bases that all potential environmental impacts are analyzed, staff is confident that the adoption of the MMLUC changes to the Zoning Regulations will not result in a significant effect on the environment. As such, pursuant to section 15061(b) 3, adoption of the MMLUC is exempt from CEQA.

Additionally, the LCP Amendments are statutorily exempt from environmental review per Section 15265 of the California Environmental Quality Act (CEQA) Guidelines. The Coastal Commission's review and development process for LCP's and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of environmental review required by CEQA. This staff report has considered the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. For the above-stated reasons, we believe the proposed amendment is exempt from environmental review under CEQA.

ALTERNATIVES (TO PART B): The Planning Commission could elect to continue the item to another meeting to allow for consideration of alternative language. This alternative should be implemented if the Commission proposes substantial changes that require more thorough review. Planning Division staff is in support of the Commission taking the time it needs to make sure the proposed ordinances and other implementation measures are correct.

ATTACHMENT 1
Staff Analysis of the Evidence Supporting the Required Findings

Required Findings: To approve this project, the Planning Commission shall determine that there is evidence in support of making **all** of the following required findings.

1. **General Plan Consistency:** The following table identifies the evidence which supports finding that the proposed Zoning Ordinance and LCP Amendments are consistent with a comprehensive view of the General Plan Volume 1 (Framework Plan).

Section(s)	Applicable Requirements	Evidence Supporting Finding
Consistency §1330	<p>The elements of the General Plan must be consistent.</p> <p>All the goals, policies and standards must be consistent.</p> <p>The General Plan text and diagrams must support each other and show the same conclusions.</p> <p>The data base must be consistent for all the elements.</p> <p>When a portion of the plan is amended, then the rest of the plan and its implementing programs must be brought into conformity.</p> <p>Zoning or the implementation of the plan is required to be consistent with the plan.</p>	<p>The project applies countywide. The implementation measures (zoning ordinance changes) will provide guidance on a unique form of land use not previously anticipated by the Zoning Regulations. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal cultivation in residential zones, as well as siting and operational standards for collectives, cooperatives, and delivery services. The MMLUC will help prevent conflicts between medical marijuana cultivation and neighboring land uses. As well as provide for the placement of operational restrictions and careful siting of distribution facilities to ensure adequate separation from sensitive receptors and compatibility with nearby development. Therefore, the proposed changes can be found to be consistent with the goals, policies, and standards of the current General Plan.</p>
§1452.2 Required Findings	<p>Base information or physical conditions have changed; or</p> <p>Community values and assumptions have changed; or</p> <p>There is an error in the plan; or</p> <p>To maintain established uses otherwise consistent with a comprehensive view of the plan.</p>	<p>The base information of the General Plan changed with the passage of Proposition 215 in 1995 and adoption of Senate Bill 420 in 2004.</p> <p>The new implementing ordinances and LCP Amendments are required to bring the other elements of the General Plan in line with the provisions of state law that pertain to medical cannabis.</p> <p>Medical Cannabis uses can be considered 'established' when considering that almost 15 years have passed since the decriminalization of Medical Marijuana occurred.</p>

2. Public Interest: The following table identifies the evidence which supports finding that the proposed Zoning Ordinances and LCP Amendments are in the public interest.

Plan Section(s)	Applicable Requirements	Evidence Supporting the Finding
Government Code Section 65356.1 and §1452.2 of the Framework Plan.	The General Plan Amendment must be in the public interest.	The project applies countywide. The implementation measures (zoning ordinance changes) will provide guidance on a unique form of land use not previously anticipated by the Zoning Regulations. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal cultivation in residential zones, as well as siting and operational standards for collectives, cooperatives, and delivery services. The MMLUC will help prevent conflicts between medical marijuana cultivation and neighboring land uses. As well as provide for the placement of operational restrictions and careful siting of distribution facilities to ensure adequate separation from sensitive receptors and compatibility with nearby development. Therefore, the proposed changes can be found to be in the public interest.

3. Consistency with State Laws: The following table identifies the evidence which supports finding that the proposed Zoning Ordinance and LCP Amendments are consistent with State Laws.

Section(s)	Applicable Requirements	Evidence Supporting Finding
<p>Consistency: Administrative Regulations – Title 14, § 13551 And Public Resources Code, § 30200 (Coastal Act)</p> <p>The proposed amendments must conform to the policies contained in Chapter 3 of the Coastal Act. Chapter 3 sets forth policies regarding the following issues:</p>	<p>Access (including provisions for access with new development projects, public facilities, lower cost visitor facilities, and public access)</p>	<p>The proposed Zoning Ordinance and Local Coastal Program amendments will help regulate a unique form of land use not previously anticipated by the Zoning Code. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal cultivation in residential zones, as well as siting and operational standards for collectives, cooperatives, and delivery services. As such, no impact on coastal access concerns, recreational uses, marine or land resources, and industrial development is anticipated.</p> <p>The proposed new regulations would permit collectives, cooperatives, and delivery services to be operated in Commercial and Industrial zones. However, Coastal Dependent Industrial (MC) zones were specifically excluded. It is therefore not expected that development would result that would interfere with coastal industrial development opportunities or existing uses. All collective facilities would be required to secure a Coastal Development Permit where Coastal Act consistency would be evaluated on a case-by-case basis.</p>
	<p>Recreation (including protection of water-oriented activities, ocean- front land protection for recreational uses, aqua- cultural uses, and priority of development purposes)</p>	
	<p>Marine Resources (including protecting biological productivity, prevent hazardous waste spills, diking, filling and dredging, fishing, revetments and breakwaters, and water supply and flood control)</p>	
	<p>Land Resources (including environmentally sensitive habitats, agricultural lands, timberlands, and archaeological resources)</p>	
	<p>Development (including scenic resources, public works facilities, safety, and priority of coastal dependent developments)</p>	
<p>Industrial Development (including location and expansion, use of tanker facilities, oil and gas development and transport (both onshore and off), and power plants.</p>		

30510(a) of the Act.	<p>Submission to the Commission</p> <p>The LCP Amendment shall be carried out in accordance with the Coastal Act (pursuant to Section 30510(a) of the Act.</p>	<p>The LCP Amendments will be carried out in accordance with § 30510(a) of the Coastal Act. The amendment(s) shall be forwarded to the Coastal Commission for review and certification, following adoption by the Board of Supervisors, and including sufficient materials to insure a 'thorough and complete review'.</p>
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4. IMPACT ON RESIDENTIAL DENSITY TARGET: The following table identifies the evidence which supports finding that the proposed project will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
312-17.1.5 Housing Element Densities	<p>The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the mid point of the density range specified in the plan designation), except where: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.</p>	<p>The proposed Zoning Ordinance and Local Coastal Program amendments will help regulate a unique form of land use not previously anticipated by the Zoning Code. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal cultivation in residential zones, as well as siting and operational standards for collectives, cooperatives, and delivery services. These provisions will not affect the number of housing units available within the county. In fact, the failure to regulate residential cultivation could result in the conversion of housing units to exclusive use as cannabis production and processing facilities; thus reducing available housing stock (contrary to the goals of the Housing Element).</p>

5. Environmental Impact:

Amending the text of the Humboldt County Zoning Regulations is a "project" for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061(b)3, there is a 'general rule' that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

One of the primary purposes of the Medical Marijuana Land Use Code (MMLUC) is to reduce negative impacts to the community from cultivation in residential areas. Given that these changes to the Zoning Regulations will require a Special Permit for personal cultivation in excess of the limits to be established and a Conditional Use Permit for all proposals to collectively cultivate and distribute medical cannabis, and because each Conditional Use Permit is subject to CEQA review thus assuring that on an application-by-application bases that all potential environmental impacts are analyzed, staff is confident that the adoption of the MMLUC changes to the Zoning Regulations will not result in a significant effect on the environment. As such, pursuant to section 15061(b) 3, adoption of the MMLUC is exempt from CEQA. Additionally, the LCP Amendments are statutorily exempt from environmental review per Section 15265 of the California Environmental Quality Act (CEQA) Guidelines; the Coastal Commission's review and development process for LCP's and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of environmental review required by CEQA.

ATTACHMENT 2
Jurisdictional Regulatory Comparison Matrix

<i>revised 12-17-10</i>	CITY OF ARCATA [Effective 12/22/08]	CITY OF EUREKA [Effective 9/3/10]	HUMBOLDT COUNTY MMLUC [Draft]
Personal Cultivation			
Authorize indoor cultivation for personal use ^a	X	X	X
Allow sale of excess personal medical cannabis to a collective ^b		X ^c	X ^c
Cultivation limited to detached single-family residential properties	X		
Collectives & Cooperatives			
Collectives allowed in specific zones with a Conditional Use Permit (CUP) ^d	X	X	X
Zones where permitted	Commercial Industrial Public Facility	Service Commercial (CS) Hospital Medical (HM) Limited Industrial (ML) General Industrial (MG)	Commercial Zones (C-1,C-2,C-3,CG,CH,CN) Industrial Zones (MB,ML,MH,MG)
Maximum number of Collectives	4 ^e	6	12
Maximum number of Distribution facilities	4	10	12
Requested distance from:			
<ul style="list-style-type: none"> • any residential zoning district • the nearest collective or distribution facility • any public park, playground, licensed day care, or school ^h 	300 feet ^g 500 feet ^g 500 feet ^g	300 feet ^g 1000 feet ^g 1000 feet	500 feet ^g 500 feet ^g 500 feet ^g
Allow collectives to cultivate on or off-site w/ a CUP	X	X	
Collectives may:			
<ul style="list-style-type: none"> ▪ distribute live plants, starts and clones ▪ display and sell paraphernalia associated with consumption of medical marijuana ▪ allow use of Medical Cannabis on the premises or in the vicinity 	X ^g X ^g X ^g	X ^g X ^g X ^g	X ^g X X ^g
Subject to Annual Performance Review	X		X
Use Permit is Transferrable to Another Operator	X ^j		X ^j
CUP approval timeframe open-ended	X ^j	X ⁱ	X ^j
Delivery Services			
Allowed with a CUP		X ^k	X
^a Principally permitted cultivation limited to: qualified patient(s) living in residence, ≤ 50 ft. ² of canopy area, ≤ 1,200 watts of lighting, max height 10 feet. Allow for up to 100 ft. ² of grow area through exception process. Kitchen, Bathrooms, and primary bedrooms may not be used for cultivation. Cultivation area must comply with Building Code and Fire Code including ventilation req's listed under §1203.4 or §402.3 of the Building Code. HC Regulations require atleast one bedroom remain for every two occupants.			
^b Arcata's Ordinance allows patients to contribute excess medicine to a collective of which they are a member w/o remuneration. The Collective may redistribute and "credit" its members for any medical marijuana provided.			
^c Compensation limited to actual costs associated with cultivation. A Collective's CUP must cover this activity.			
^d Must be organized as a Collective or Cooperative, Display and Enforce Rules & Regulations identified with an Operations Plan			
^e Four collectives located in Arcata lawfully predate the adoption of the Ordinance. Total number of allowed collectives limited to four (4) and ultimately two (2) (should one or two of the existing collectives cease operation). Existing collectives are required to come into compliance (secure a Conditional Use Permit) within one year of the Ordinance's adoption.			
^f Maximum of four cultivation/production facilities would be allowed within city limits;			
^g Subject to the discretion of the Reviewing Authority.			
^h Health & Safety Code §11362.768(b) prohibits new collectives from being operated on land within 600 feet of the property line of a K-12 School.			
ⁱ Use Permit is exclusive to the permittee and may not be transferred to another party or site. Permit expires if operations cease for > 1-month.			
^j Subject to the discretion of the Initial Reviewing Authority through modification of the approved Conditional Use Permit.			
^k Delivery Services must originate from one of the 6 conditionally permitted distribution sites in City of Eureka. Mobile-based distribution facilities are prohibited.			

ATTACHMENT 3
Applicable Policy & Law

State Law(s) & Policy

Proposition 215

On November 5, 1996, Proposition 215 (or the Compassionate Use Act) was approved by 56% of California voters. Passage of this initiative resulted in the addition of Section 11362.5 to the State Health and Safety Code.

11362.5. of the Health & Safety Code

(a) This section shall be known and may be cited as the **Compassionate Use Act of 1996**.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) 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 who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

Senate Bill 420

Senate Bill 420 (the Medical Marijuana Program Act) was signed into law on October 12, 2003 and clarified the scope and application of Proposition 215 and created the Medical Marijuana Program (MMP); a voluntary medical marijuana identification registry program for qualified patients and their caregivers. Collectively, these laws resulted in clarifying the medical use of marijuana by "qualified patients". Under SB 420, to be a considered a "qualified patient", one must be a California resident who has been evaluated by an "attending physician" ("*an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California...*") "*who has conducted a medical examination of*" the patient and determined that the patient has a "serious medical condition" where "*the medical use of marijuana is appropriate*". SB 420 recognizes the right of qualified patients and their designated primary caregivers to cooperatively or collectively cultivate marijuana:

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

Attorney General Guidelines

The Medical Marijuana Program Act directed the Attorney General's Office to develop and adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use". The Attorney General Guidelines were published in August of 2008 and attempted to clarify and summarize the provisions of Proposition 215 and Senate Bill 420. Section IV "Guidelines Regarding Collectives & Cooperatives", defines the principal differences between Collectives and Cooperatives while detailing a number of considerations unique to their use including:

- Non-Profit Operation
- A seller's permit from the Board of Equalization AND a business license are required
- Obligation to conduct specific Membership and Verification procedures
- May only Acquire, Possess, and Distribute Marijuana that has been lawfully cultivated
- Members-Only Distribution
- Provisions for providing medicine to members for free, in exchange for services, or "based on fees that are reasonably calculated to cover overhead costs and operating expenses"
- Additional Possession and Cultivation Guidelines

Local Law & Policy

DA Prosecution Guidelines

The Humboldt County District Attorney's *Prosecution Guidelines* were issued on February 14, 2003 and provided guidance regarding situations where qualified patients engaged in cultivation for personal medical use would not be prosecuted by the District Attorney's Office. The *Guidelines* also were meant to assist law enforcement personnel who encounter possession and cultivation situations.

Ordinance 2328

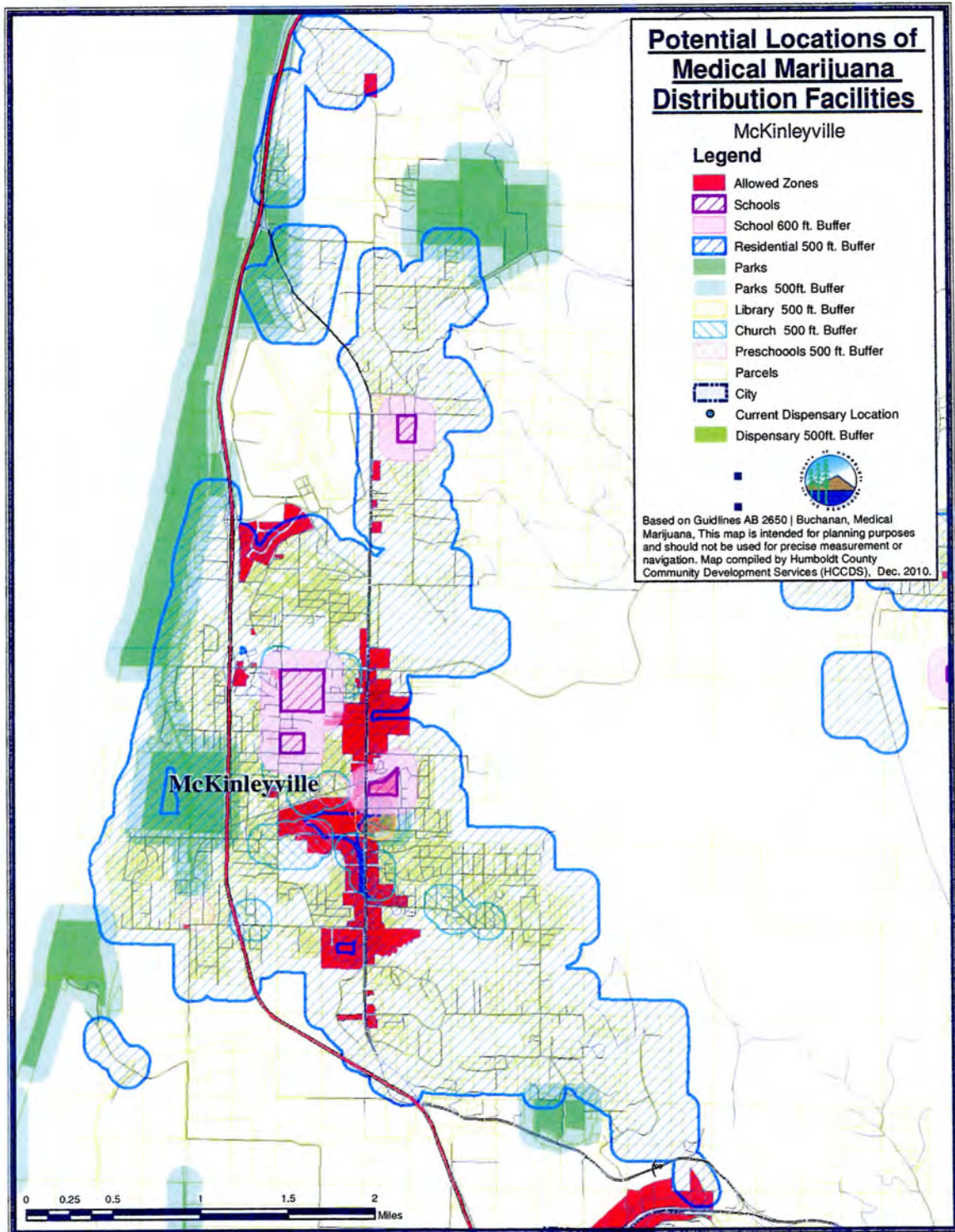
Ordinance 2328 was adopted by the Humboldt County Board of Supervisors on August 17, 2004 and provided guidelines to local patients, their caregivers and law enforcement regarding the implementation of Proposition 215 and SB 420. The ordinance also increased the default State limits for the size of areas devoted to cultivation for personal medical use, number of plants, and annual possession amounts for qualified patients and designated "primary caregivers".

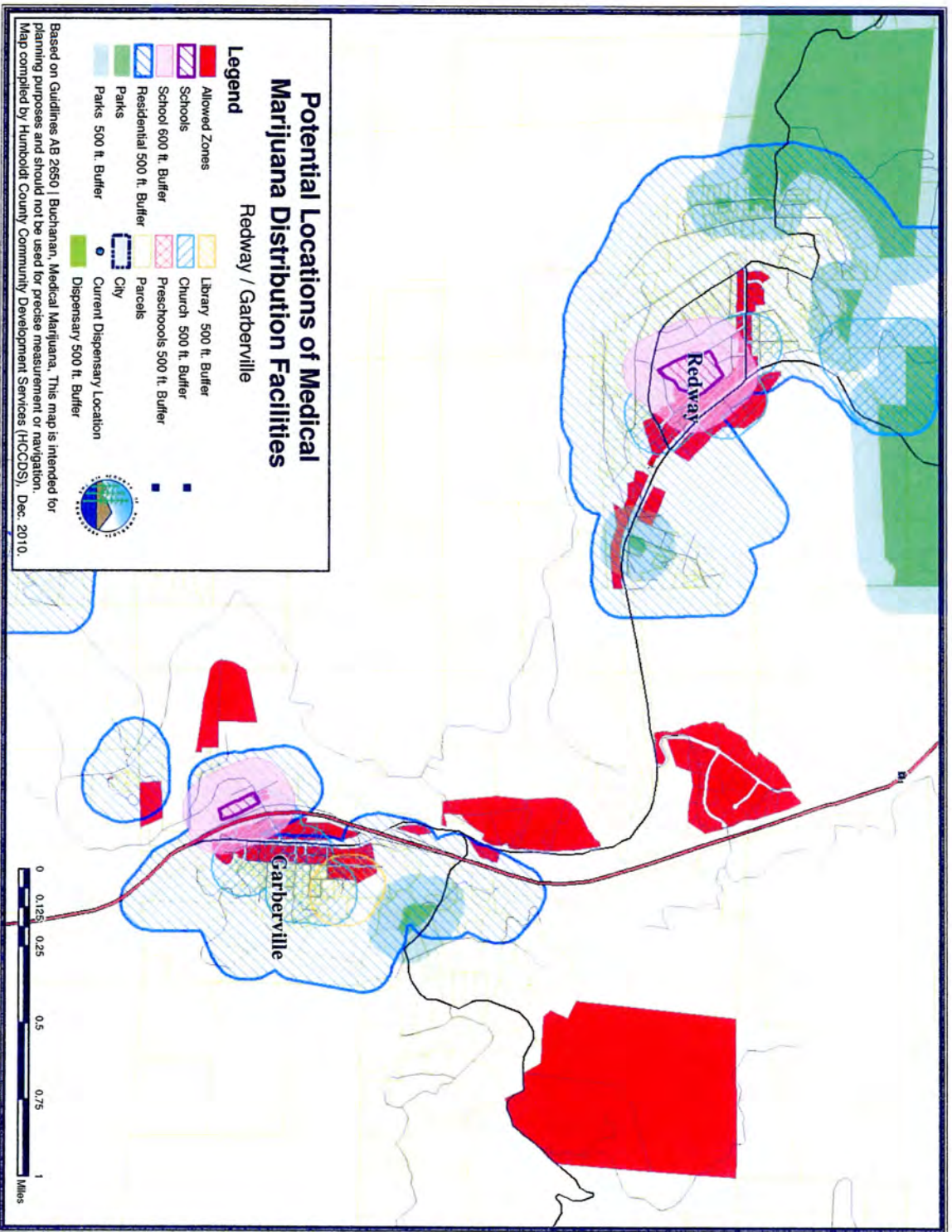
Zoning Regulations

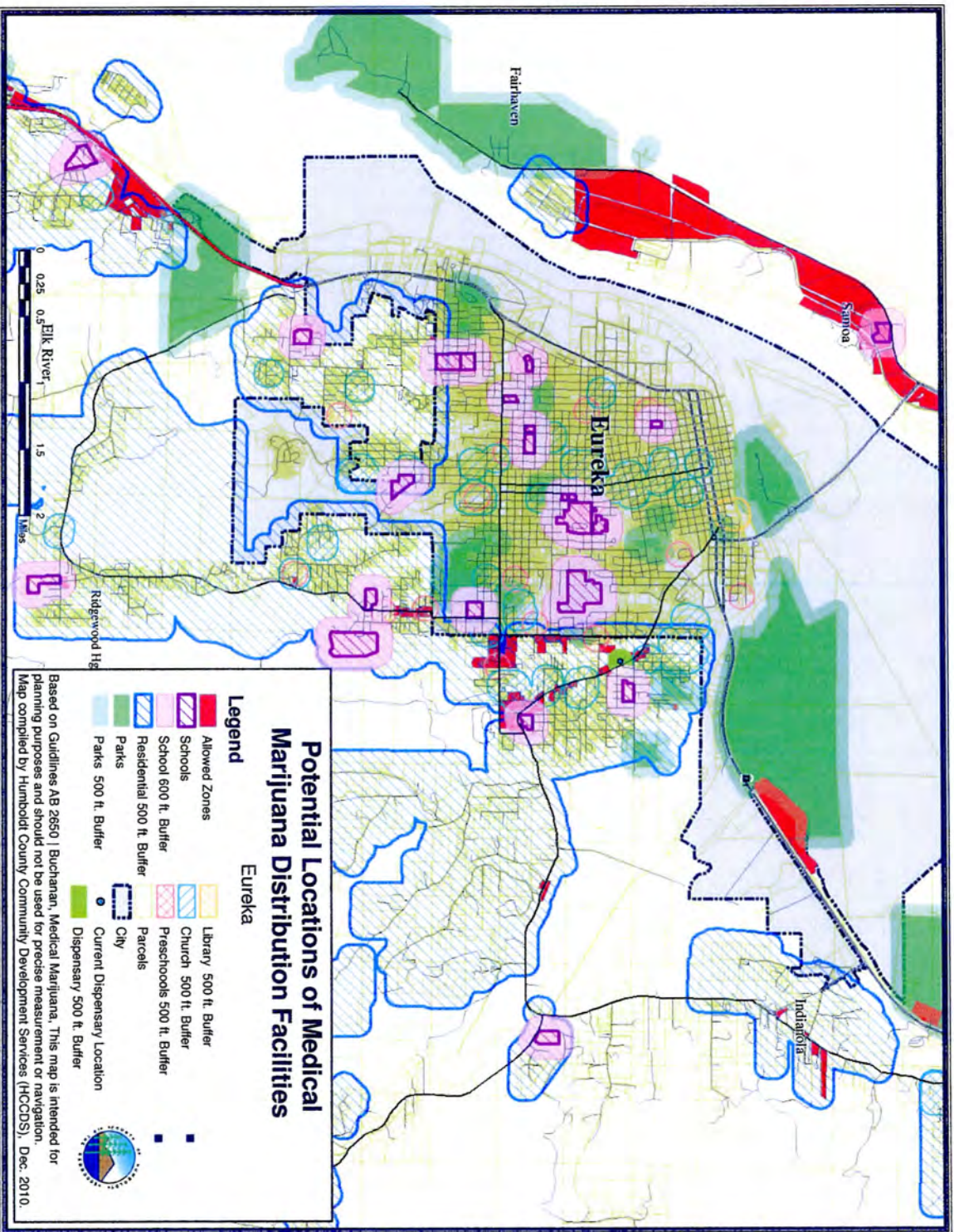
The Zoning Regulations are silent with regard to the uses associated with Medical Cannabis. §311-4 of the Zoning Regulations "Interpreting the Regulations if a Provision Is Unclear" authorizes the processing of a Special Permit to determine where and when a use is principally or conditionally permitted if there is ambiguity in the regulations. In 2004, during review of a proposal to establish a Willow Creek clinic engaged in the on-site indoor cultivation and distribution of medical cannabis on a commercially-zoned parcel (SP-03-146 Humboldt Patient Resource Center 'HPRC'), the Board of Supervisors determined that facilities engaged in the cultivation and distribution of medical cannabis are a unique form of land use to be distinguished from "medical offices and clinics" and shall require a Conditional Use Permit in all cases. Though the Special Permit for 'HPRC' was approved by the Board of Supervisors on December 7, 2004, operations were never initiated and the permit eventually expired. A Conditional Use Permit (Case No. CUP-08-16) for The Humboldt County Collective (THCC), the only Collective (in the unincorporated portions of the County) currently in operation at this time, was issued by the Planning Commission on August 5, 2010.

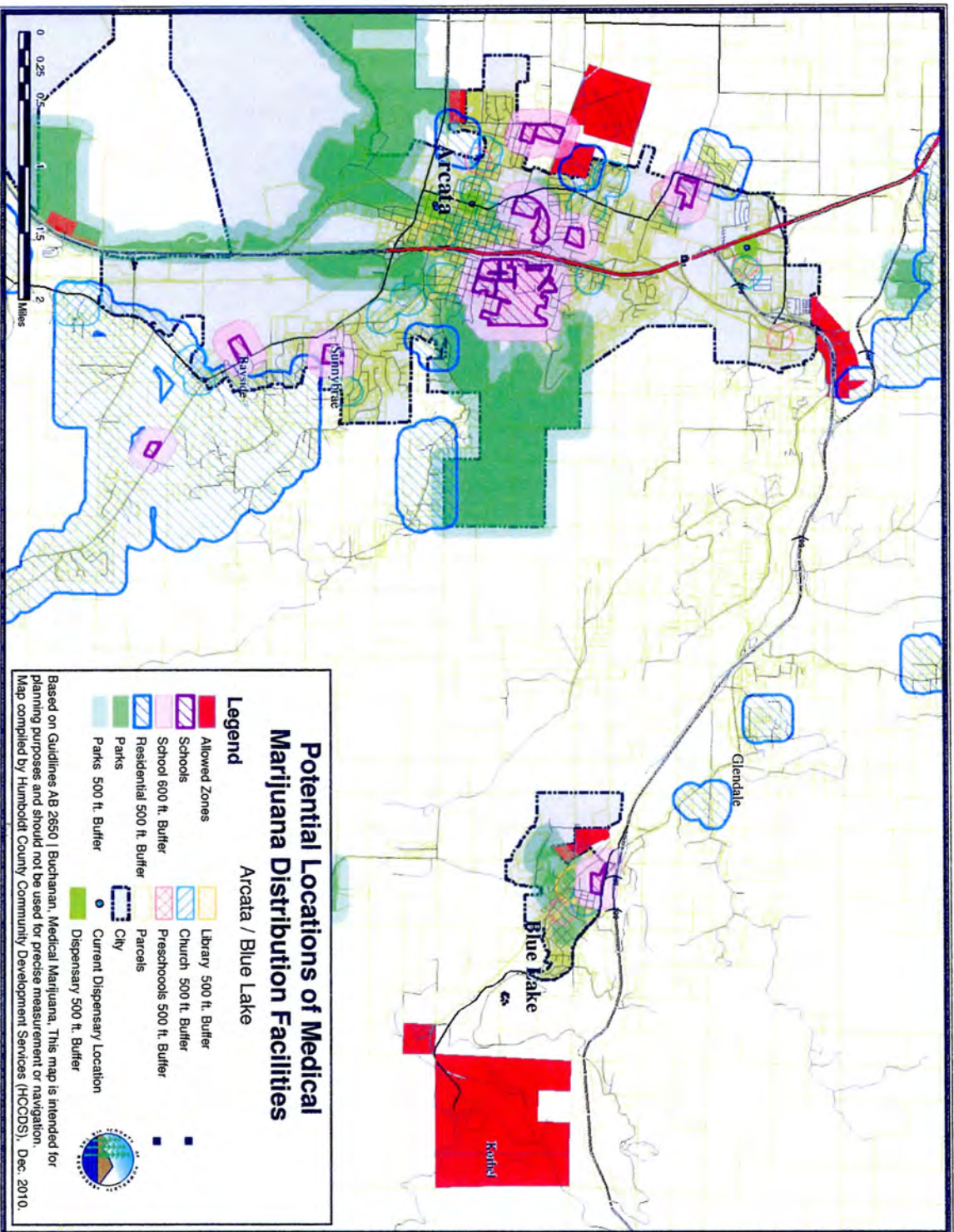
ATTACHMENT 4

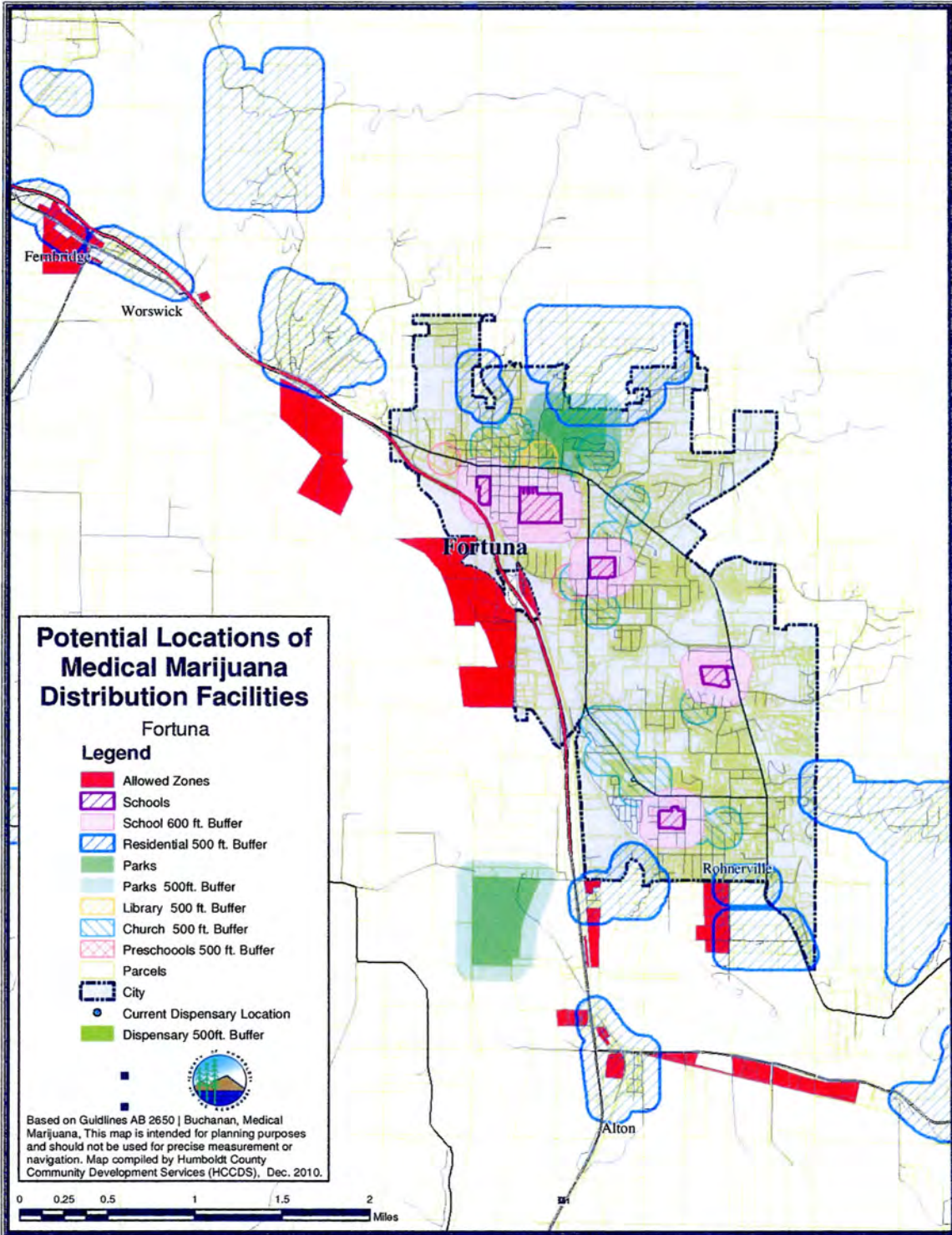
Potential Collective sites within McKinleyville, Garberville/Redway
As well as the unincorporated portions of Eureka, Arcata, Blue Lake, and Fortuna











ATTACHMENT 5
Draft Medical Cannabis Regulations

ARCATA MUNICIPAL CODE

4. The proposed use of each live/work unit would not adversely affect the health or safety of live/work unit residents by creation of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of materials, processes, products, or wastes.

9.42.105 – Medical Marijuana: Cultivation and Dispensing

- A. **Purpose.** The purpose and intent of this section is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law.
- B. **Applicability.** No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and dispensing of medical marijuana in the City of Arcata is controlled by the provisions of this section of the Land Use Code. Accessory uses and home occupations, where medical marijuana is involved shall be governed by the provisions of this section.
- C. **Release of Liability and Hold Harmless.** The owner and permittee of a medical marijuana cooperative, collective or cultivation facility shall release the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each medical marijuana cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Arcata and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of medical marijuana provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director.
- D. **Medical Marijuana for Personal Use.** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:
 1. The medical marijuana cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height per residence;
 - a. Medical marijuana cultivation lighting shall not exceed 1200 watts;
 - b. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited;
 - c. In accordance with Section 9.42.090.B.2., medical marijuana cultivation and sale is prohibited as a Home Occupation. Per Section 9.42.040, Accessory Uses, medical marijuana cultivation and sales is not considered an accessory use. No sale or dispensing of medical marijuana for personal use is allowed;

- d. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation either within or outside the residence;
 - e. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - f. The qualified patient shall not participate in medical marijuana cultivation in any other residential location within the City of Arcata;
 - g. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation;
 - h. The medical marijuana cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)); and
 - i. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
2. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 9.42.105 D. 1. shall require a Zoning Administrator Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Zoning Administrator shall review the submitted information and make an interpretation in accordance with Section 9.10.050. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers. Approved medical marijuana cultivation for personal use that exceeds 50 square feet shall conform to the following standards:
- a. Shall be in compliance with §9.42.105 D 1 a. – i. above; and
 - b. The medical marijuana cultivation area shall not exceed an additional 50 square feet for the total of 100 square feet and not exceed ten feet (10') in height per residence; and
 - c. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board; and
 - d. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

- E. Permit requirements for Medical Marijuana Cooperatives or Collectives.** Medical marijuana cooperatives or collectives may be established only in those zoning districts listed in Table 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cooperatives or collectives shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a medical marijuana cooperative or collective. A medical marijuana cooperative or collective shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical marijuana.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing cooperative or collective in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

- 1. Specific Regulations.** The following specific regulations apply to medical marijuana cooperatives or collectives.
- a. The total number of medical marijuana cooperatives or collectives within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the four (4) cooperatives or collectives ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2).
 - b. In addition to Section 9.72.080 F (Use Permit Findings and decision), the review authority should give special consideration to approving cooperatives or collectives located: within a 300 foot radius from any existing residential zoning district, within 500 feet of any other medical marijuana cooperative or collective as defined in the glossary which is located either inside or outside the jurisdiction of the City, or within 500 feet from any existing public park, playground, day care, or school.
 - c. Source of medical marijuana. A medical marijuana cooperative or collective shall only dispense marijuana from the following sources:
 - (1) Permitted Cooperative or Collective. If the Use Permit authorizes limited, on-site medical marijuana cultivation at the cooperative or collective, a permitted medical marijuana cooperatives' or collectives' on-site cultivation shall not exceed twenty-five (25) percent of the cooperatives' or collectives' total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - (2) Off-site Permitted Cultivation. The cooperative or collective cultivates medical marijuana in an off-site location in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually.

- (3) **Qualified Patients.** In the case of a medical marijuana cooperative or collective, the medical marijuana is acquired from an individual qualified patient who cultivated the medical marijuana in accordance with the standards in Section 9.42.105.D., the qualified patient received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Pursuant to California Health and Safety Code §11362.765 (c) a collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
- d. **Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit)** a medical marijuana cooperative or collective application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:
 - (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
 - (2) A description of the staff screening process including appropriate background checks;
 - (3) The hours and days of the week the medical marijuana cooperative or collective will be open;
 - (4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cooperative or collective. The material shall also show adjacent structures and land uses;
 - (5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;
 - (6) A description of the screening, registration and validation process for qualified patients;
 - (7) A description of qualified patient records acquisition and retention procedures;
 - (8) The process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources;
 - (9) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;
 - (10) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and
 - (11) Other information required by the Community Development Director.
2. **Operating Standards.** Medical marijuana cooperatives or collectives shall comply with all of the following operating standards.
 - a. No dispensing medical marijuana to an individual qualified patient or primary caregiver more than twice a day;
 - b. Medical marijuana cooperatives or collectives shall only dispense medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid;

- c. Medical cooperatives or collectives shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. The client rules and/or regulations shall include, but not limited to:
 - (1) Each building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana on the premises or in the vicinity of the cooperative or collective is prohibited unless specifically authorized with the Use Permit.
 - (2) The building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and/or they are under the supervision of their parent or legal guardian.
 - d. The hours of operation for an approved medical marijuana cooperative or collective shall be limited to between 8:00 a.m. to 8:00 p.m. or as specified within the Use Permit.
 - e. Medical marijuana cooperatives or collectives shall not permit the use of medical marijuana on-site unless specifically authorized under the Use Permit.
 - f. Medical marijuana cooperatives or collectives shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);
 - g. Medical marijuana cooperatives or collectives shall only permit the distribution of live plants, starts and clones as allowed by the approved Use Permit. Such distribution shall be limited to qualified patients or primary caregiver;
 - h. Medical marijuana cooperatives or collectives shall only permit the on-site display or sale of marijuana paraphernalia used for the consumption of medical marijuana as allowed by the approved Use Permit;
 - i. Medical marijuana cooperatives or collectives shall comply with other conditions as outlined in the Use Permit;
 - j. Medical marijuana cooperatives or collectives shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - k. Medical marijuana cooperatives or collectives shall implement procedures as outlined in their approved Operations Manual;
 - l. Medical marijuana cooperatives or collectives shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and dispensing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
3. **Permit Revocation or Modification.** A use permit may be revoked or modified according to Section 9.96.070 (Permit Revocation or Modification). Use Permit revocation proceedings may occur for non-compliance with one or more of the items 2.a. through l. above.

- 4. Transfer of Use Permit:** The rights of an approved Use Permit to operate a medical marijuana cooperative or collective may be transferred to another cooperative or collective as a Use Permit modification according to Section 9.96.070 (Permit Revocation or Modification).

- F. Medical Marijuana Cultivation for Cooperative or Collective.** Except as permitted in Section 9.42.105 E. 1. c. (1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only in those zoning districts listed in Table 2-1 "Allowable Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts" and 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cultivation and processing for a medical marijuana cooperative or collective shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate medical marijuana cultivation or processing facility.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing medical marijuana cultivation and processing structure or use in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

- 1. Specific Regulations.** The following specific regulations apply to medical marijuana cultivation and processing.
- a. The total number of medical marijuana cultivation and processing facilities within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the cultivation and processing facilities ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2). If a medical marijuana cooperative or collective allows for marijuana cultivation and processing pursuant to Section 9.42.105 E. 1. c. (1), the cooperative or collective shall be counted as one of the four (4) (or three (3), or two (2) as noted above) allowed marijuana cultivation and processing facilities.
 - b. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, shall be ventilated with odor control, and shall not create a humidity or mold problem;
 - c. The medical marijuana cultivation and processing facility shall not adversely affect the health or safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes;
 - d. The medical marijuana cultivation and processing facility must be permitted in conjunction with an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;
 - e. The medical marijuana cultivation and processing facility shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;
 - f. The size and scale of the cultivation shall be proportional to the qualified patient load of an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;

- g. Medical marijuana cultivation and processing facilities shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);
- h. Medical marijuana cultivation and processing facilities shall not permit the on-site display or sale of paraphernalia used for the use or consumption of medical marijuana;
- i. Medical marijuana cultivation and processing facilities shall comply with other conditions as outlined in the Use Permit;
- j. Medical marijuana cultivation and processing facilities shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cultivation and processing facilities shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
- k. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cultivation and processing application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:
 - (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
 - (2) A description of the staff screening process including appropriate background checks;
 - (3) The hours and days of the week the medical marijuana cultivation and processing facility will be open;
 - (4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cultivation and processing facility. The material shall also show adjacent structures and land uses;
 - (5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;
 - (6) The process for tracking medical marijuana quantities and inventory controls;
 - (7) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;
 - (8) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and
 - (9) Other information required by the Community Development Director.
- l. Medical marijuana cultivation and processing facilities shall implement procedures as outlined in their approved Operations Manual;
- m. Medical marijuana cultivation and processing facilities shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and processing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

9.42.110 - Mixed Use Projects

This Section provides standards for the design of mixed use projects, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). A mixed use project combines residential and nonresidential uses on the same site, with the residential units typically located above the nonresidential uses (vertical mixed use). Residential units may be also allowed at ground level behind street-fronting nonresidential uses (horizontal mixed use) only under the limited circumstances specified by this Section.

- A. Design considerations.** A mixed use project shall be designed to achieve the following objectives.
1. The design shall provide for internal compatibility between the residential and non-residential uses on the site.
 2. Potential glare, noise, odors, traffic, and other potentially significant impacts on residents shall be minimized to allow a compatible mix of residential and nonresidential uses on the same site.
 3. The design shall take into consideration potential impacts on adjacent properties and shall include specific design features to minimize potential impacts.
 4. The design shall ensure that the residential units are of a residential character, and that appropriate privacy between residential units and other uses on the site is provided.
 5. Site planning and building design shall provide for convenient pedestrian access from the public street into the nonresidential portions of the project, through such means as courtyards, plazas, walkways, and street furniture.
 6. Site planning and building design shall be compatible with and enhance the adjacent and surrounding residential neighborhood in terms of building design, color, exterior materials, landscaping, lighting, roof styles, scale, and signage.
- B. Mix of uses.** A mixed use project may combine residential uses with any other use allowed in the applicable zoning district by Article 2 (Zoning Districts and Allowable Land Uses); provided, that where a mixed use project is proposed with a use to have Minor Use Permit or Use Permit approval in the applicable zoning district, the entire mixed use project shall be subject to that permit requirement.
- C. Maximum density.** The residential component of a mixed use project shall comply with the density requirements of the applicable General Plan designation and zoning district.

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CHAPTER 158: MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Section

General Provisions

- 158.001 Findings and purpose
- 158.002 Interpretation and applicability
- 158.003 Release of liability and hold harmless
- 158.004 Definitions
- 158.005 Severability

Personal Use - Requirements & Regulations

- 158.010 Cultivation
- 158.011 Processing
- 158.012 Distributing

Cooperatives & Collectives - Requirements & Regulations

- 158.020 Offices and Labs
- 158.021 Number of Facilities
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Permits

- 158.030 Fees and taxes
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Non-medical Marijuana Use – Requirements & Regulations

- 158.040 Personal Use Cultivation, Processing, and Distributing

GENERAL PROVISIONS

§ 158.001 FINDINGS AND PURPOSE.

(A) The City Council of the City of Eureka, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation, processing and distribution of medical cannabis in the City of Eureka has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These

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impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(B) The City Council of the City of Eureka also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(C) The purpose and intent of this chapter is to regulate the cultivation, processing and distribution of medical cannabis in a manner that protects the public health, safety and welfare of the community and mitigates for the costs to the community of the oversight of these activities.

§ 158.002 INTERPRETATION AND APPLICABILITY.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and distribution of medical cannabis in the City of Eureka is controlled by the provisions of this chapter of the Eureka Municipal Code. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this chapter.

(B) Nothing in this ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.

(C) Nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing in this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter, regardless if the cultivation, processing or distribution existed or occurred prior to adoption of this chapter.

§ 158.003 RELEASE OF LIABILITY AND HOLD HARMLESS.

As a condition of approval of any conditional use permit approved for a medical cannabis cultivation, processing, and/or distribution facility, the owner or permittee of each medical cannabis collective, cooperative, cultivation, processing or distribution facility shall indemnify and hold harmless the City of Eureka and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third

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parties due to the operations at the collective, cooperative, cultivation, processing or distribution facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation, processing or distribution of medical cannabis.

§ 158.004 DEFINITIONS.

DWELLING UNIT. A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

MEDICAL CANNABIS. (also known as *medical marijuana*) Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, processing or distribution of medical cannabis.

MEDICAL CANNABIS CULTIVATION FACILITY. A facility at which medical cannabis is grown and harvested for supply to a **MEDICAL CANNABIS PROCESSING FACILITY** and/or a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.

MEDICAL CANNABIS CULTIVATION AREA. The maximum dimensions allowed for the growing and processing of medical cannabis. For the purpose of this chapter, the allowable cultivation area shall apply to the outward edge of the vegetative canopy.

MEDICAL CANNABIS DISTRIBUTION. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.

MEDICAL CANNABIS DISTRIBUTION FACILITY. Any facility or location where the primary purpose is to distribute medical cannabis as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).

MEDICAL CANNABIS PROCESSING. Medical cannabis processing includes, but is not limited to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling.

MEDICAL CANNABIS PROCESSING FACILITY. A facility at which medical cannabis is processed for supply to a **MEDICAL CANNABIS DISTRIBUTION FACILITY**.

QUALIFIED PATIENT. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time

RESIDENCE. A legal dwelling unit.

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§ 158.005 SEVERABILITY

If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PERSONAL USE - REQUIREMENTS & REGULATIONS

§ 158.010 CULTIVATION.

(A) A qualified patient shall be allowed to cultivate medical cannabis for their own personal use in an area not to cumulatively exceed 50 square feet per residence. Cultivation of medical cannabis for personal use shall be in conformance with the following standards:

(1) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property;

(2) The qualified patient shall reside in the residence where the medical cannabis cultivation occurs;

(3) Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient. Cultivation of medical cannabis for personal use shall not displace required off-street parking;

(4) The medical cannabis cultivation area shall not exceed 50 square feet and shall not exceed 10 feet in height per residence, regardless if cultivated within the residence or in an accessory building unless an exception request is obtained per section 158.010(B);

(5) If required by Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8" Type X moisture resistant drywall;

(6) The medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) Medical cannabis cultivation lighting shall not exceed 1200 watts unless an exception request is obtained per section 158.010(B);

(9) All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the

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use of extension cords to supply power to electrical equipment used in the cultivation of medical cannabis is prohibited;

(10) Any electrical wiring/rewiring shall first require an electrical permit from the Building Department;

(11) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis cultivation is prohibited unless an exception request is obtained per section 158.010(B); and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

(B) The medical cannabis cultivation area may exceed the 50 square foot maximum per residence, up to a total of 100 square feet of cultivation area, or the standards in section 158.010(A)(4)(8) or (11) above may be modified, upon approval of an Exception Request issued by the Director of Community Development. An Exception Request shall not allow more than a total of 100 square feet per residence regardless if cultivated within the residence or an accessory building.

(1) An application for an Exception Request shall include the following information

(a) Written permission from the property owner;

(b) An application fee set by resolution of the City Council;

(c) Adequate information and documentation, such as a physician's recommendation, or verification of more than one qualified patient living in the residence, to demonstrate why the cultivation area should be allowed to exceed 50 square feet;

(d) The specified location and size of the requested cannabis cultivation area not to exceed 100 square feet and not to exceed 10 feet in height;

(e) A materials storage, handling and disposal plan; and

(f) If the Exception Request includes a request to modify the standards prescribed in section 158.010(A)(4)(8) or (11), documentation and information shall be provided identifying which standards are proposed to be modified and why such modification would not detrimentally affect the use of the dwelling unit for its intended residential occupancy.

(2) If required by Building or Fire Code, the applicant shall make specified improvements to the residence with a Building Permit, if one is needed. Such improvements may include, but are not limited to, electrical system upgrades.

(3) The Director of Community Development in consultation with the Chief Building Official and Fire Marshal shall review the submitted application and determine if the specific circumstances warrant granting an Exception Request.

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(4) The Exception Request shall become void, and the cannabis cultivation area in excess of 50 square feet shall be removed one year following the date on which the Exception Request was issued unless the Exception Request is renewed prior to expiration.

(C) Medical cannabis cultivation is prohibited as a Home Occupation. Medical cannabis cultivation shall not be considered a residential accessory use. No distribution of medical cannabis cultivated for personal use shall be allowed.

§ 158.011 PROCESSING.

(A) A qualified patient shall be allowed to process medical cannabis cultivated within his/her private residence. Processing of medical cannabis cultivated at the residence shall be in conformance with the following standards:

(1) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(2) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis processing shall remain at all times secondary to the residential use of the property;

(3) The medical cannabis processing shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(4) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis processing is prohibited; and

(5) The processing of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

(B) Medical cannabis processing is prohibited as a Home Occupation. Medical cannabis processing shall not be considered a residential accessory use. No sale or distributing of medical cannabis processed for personal use shall be allowed.

§ 158.012 DISTRIBUTING.

Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective unless specifically allowed under this chapter.

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.020 OFFICES AND LABS

(A) *Offices.* Offices for a cooperative or collective at which no cultivation, processing, storage, handling or distributing of cannabis, in any form, occurs shall be allowed in any zoning

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district in which offices are allowed. Such offices shall be subject to all regulations and standards applicable to offices as prescribed in the Zoning Regulations of the Eureka Municipal Code.

(B) *Medical Research Labs and Testing Facilities.* Medical cannabis research labs or medical cannabis testing facilities at which no cultivation, processing, or distribution of medical cannabis occurs shall be allowed in any zoning district in which laboratories or medical laboratories are permitted. Such facilities shall be subject to all regulations and standards applicable to labs or medical labs as prescribed in the Zoning Regulations of the Eureka Municipal Code.

§ 158.021 NUMBER OF FACILITIES.

(A) There shall be a maximum of four (4) cultivation/processing facilities permitted within city limits; each of the cultivation/processing facilities shall be allowed a maximum of two distribution facilities located within city limits. The cultivation/processing facilities may each have one off-site distribution facility. If the cultivation/processing facility has two distribution facilities, one must be located on-site with the cultivation/processing facility.

(B) A maximum of two distribution facilities not associated with any of the four permitted cultivation/processing facilities shall be allowed within city limits.

(C) The selection process for the cultivation/processing and distribution facilities shall be established by the City Council.

§ 158.022 CULTIVATION OR PROCESSING.

(A) Cultivation or processing facilities for distribution shall be allowed only in the Agriculture (A), Coastal Agriculture (AC), Service Commercial (CS), Limited Industrial (ML) or General Industrial (MG) zone districts.

(B) Cultivation or processing facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a cultivation or processing facility for distribution.

(C) Research, testing, or other similar facilities that cultivate cannabis shall be considered, for the purpose of this chapter, a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

(D) In addition to the conditional use permit required under section 158.022(B), a cultivation or processing facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a cultivation or processing facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

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(2) Text and graphic materials showing the site and floor plan for the medical cannabis cultivation or processing facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The equipment and methods employed in the cultivation or processing of the medical cannabis;

(4) How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients;

(5) The hours and days of the week the medical cannabis cultivation or processing facility will be open;

(6) The number of persons, per shift, who will be working at the cultivation or processing facility;

(7) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(8) The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis;

(9) The chemicals stored or used at the premises;

(10) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(11) The name, location and operator of the distribution facility(ies) for which the medical cannabis is being cultivated or processed; and

(12) Any other information required by the Director of Community Development relevant to the ordinance.

(F) Cultivation or processing facilities shall be subject to the following specific regulations:

(1) The cultivation area shall occur only within a self-contained structure that is in compliance with California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(2) The cultivation or processing facility shall comply with stormwater, wastewater, and other applicable requirements of the City;

(3) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

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(4) The on-site display of cannabis plants, except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the cultivation or processing facility;

(5) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the cultivation or processing facility;

(6) Cultivation or processing facilities shall maintain all necessary permits, and pay all appropriate taxes;

(7) Cultivation or processing facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(8) A cultivation or processing facility located off-site from the associated medical cannabis distribution facility shall not distribute medical cannabis from the cultivation or processing site unless permitted in the conditional use permit;

(9) The cultivation or processing of medical cannabis shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(10) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(11) Medical cannabis cultivation or processing facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) The conditional use permit approved for a cultivation or processing facility may be suspended or revoked as prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a cultivation or processing facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a cultivation or processing facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified cultivation or processing facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.023 DISTRIBUTING.

(A) Medical cannabis distributing facilities shall be allowed only in the Service Commercial (CS), Hospital Medical (HM), Limited Industrial (ML) or General Industrial (MG) zoning districts. Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.

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(B) Medical cannabis distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a medical cannabis distribution facility.

(C) In addition to the conditional use permit required under section 158.023(B), a distribution facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in of the Eureka Municipal Code.

(D) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a distribution facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the distribution facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The hours and days of the week the distribution facility will be open;

(4) The number of persons, per shift, who will be working at the distribution facility;

(5) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(6) The chemicals stored or used at the premises;

(7) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(8) The name, location and operator of the cultivation or processing facility(ies) supplying the medical cannabis to the distribution facility;

(9) A detailed Operations Manual containing, at a minimum,

(a) The staff screening process including appropriate background checks;

(b) The process for tracking medical cannabis quantities and inventory controls;

(c) A description of the screening, registration and validation process for qualified patients;

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(d) A description of qualified patient records acquisition and retention procedures; and

(e) The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources;

(10) A detailed Cannabis Safety Program, which includes at a minimum, the following,

(a) The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient;

(b) The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products effective January 1, 2011, (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants); and

(c) The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis effective January 1, 2011 (e.g., cannabinoids THC, CBD and CBN).

(11) Any other information required by the Director of Community Development that is relevant to the ordinance.

(E) Distribution facilities shall be subject to the following specific regulations:

(1) No distribution facility shall be located within 1000 feet from any existing park, playground, day care facility, school or similar facility, either inside or outside the city limits;

(2) The distribution facility shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical cannabis;

(3) The distribution facility shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the distribution facility;

(4) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical cannabis on the premises or in the vicinity of the distribution facility is prohibited unless specifically authorized under the conditional use permit;

(5) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient and/or they are under the supervision of their parent or legal guardian;

(6) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid, verified physician's recommendation. The distribution facility shall verify that the physician's recommendation is current and valid;

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(7) The distribution facility shall not distribute medical cannabis to a qualified patient or primary caregiver more than twice a day;

(8) The distribution facility shall only permit the distribution of live plants, starts and clones as allowed by the approved conditional use permit. Such distribution shall be limited to qualified patients or primary caregivers;

(9) The on-site display of cannabis plants, except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(10) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(11) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(12) Distribution facilities shall maintain all necessary permits, and pay all appropriate taxes;

(13) Distribution facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(14) The distribution of medical cannabis shall not adversely affect the health or safety of the employees or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(15) Each and every package or unit of medical cannabis, or medical cannabis product, distributed shall have a label or labels that state the following:

- (a) The name of the patient;
- (b) The name and contact information of the distributor;
- (c) An identification and tracking number for the specific package or unit of medical cannabis, or medical cannabis product;
- (d) The species or strain of the medical cannabis;
- (e) Identification of the strength and dosage of the medical cannabis;
- (f) A statement that the medical cannabis or medical cannabis product has been tested for safety and quality assurance and that the testing results, and chain of custody information is available by contacting the distributor;

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(16) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(17) Distribution facilities shall comply with other conditions prescribed in the approved conditional use permit.

(F) In addition to the findings specified for a conditional use permit, the Planning Commission shall consider the following when deciding to approve a conditional use permit for a distribution facility:

(1) If the proposed distribution facility is within a 300 feet of a residential zoning district either inside or outside the city limits, the potential impacts of the distribution facility on the residents and infrastructure of that district; and

(2) If the proposed distribution facility is within 1000 feet of any other distribution facility, either inside or outside the city limits, the cumulative impacts of the proposed distribution facility on the residents, businesses and infrastructure in the vicinity of the proposed distribution facility.

(G) The conditional use permit approved for a distribution facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a distribution facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a distribution facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified distribution facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.024 DELIVERY SERVICES

(A) A medical cannabis delivery or transportation service that is associated with a permitted distribution facility located within city limits and for which delivery originates from the distribution facility shall only be allowed when the delivery service is described and included in the conditional use permit for the distribution facility.

(B) Delivery or transportation services originating from outside city limits and delivering medical cannabis within city limits shall only be allowed upon the granting of a Mobile Business License.

(C) Delivery or transportation services originating from within city limits, but not from a permitted distribution facility are prohibited.

(D) No part of this section shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any

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activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

PERMITS

§ 158.030 FEES AND TAXES

The costs to the City arising from the processing and oversight of Exception Requests under section 158.010, subdivision (B) and permits for Cooperatives and Collectives and Distribution Facilities under sections 158.022 and 158.023, and the costs of monitoring and ensuring compliance with this Ordinance, will be offset through application fees and annual renewal fees, to be adopted by the City Council by Resolution and updated as necessary from time-to-time. In the administration of the permitting requirements under this Ordinance, the City Manager, or his designee, may require as a condition to granting and renewal of the permits any information reasonably necessary to implement the intent of this Ordinance, to ensure that the cannabis handled under the permit is grown, processed or distributed in a manner not in conflict with this Ordinance, and to ensure that any and all related sales taxes are being properly reported and paid.

§ 158.031 ENFORCEMENT

Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, as set out in Eureka Municipal Code section 10.99, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

NON-MEDICAL USE – REQUIREMENTS & REGULATIONS

§ 158.040 PERSONAL USE CULTIVATION, PROCESSING, AND DISTRIBUTING

The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Use Requirements and Regulations prescribed in section 158.010 Cultivation, section 158.011 Processing, and section 158.012 Distributing contained in this chapter.

CITY AND COUNTY OF SAN FRANCISCO HEALTH CODE

CITY & COUNTY OF SAN FRANCISCO HEALTH CODE

ARTICLE 33: MEDICAL CANNABIS ACT

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SEC. 3301. DEFINITIONS.

For the purposes of this Article:

- (a) "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.
- (b) "City" means the City and County of San Francisco.
- (c) "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.
- (d) "Director" means the Director of Public Health or any individual designated by the Director to act on his or her behalf, including but not limited to inspectors.
- (e) [*Reserved.*]
- (f) "Medical cannabis dispensary" means a cooperative or collective of ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and distribution of cannabis for medical purposes and operates not for profit, consistent with California Health & Safety Code Sections 11362.5 et seq., with the Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and with this ordinance. A cooperative must be organized and registered as a Consumer Cooperative Corporation under the Corporations Code, Sections 12300, et seq., or a Nonprofit Cooperative Association under the Food and Agricultural Code, Sections 54002, et seq. A collective may be organized as a corporation, partnership or other legal entity under state law but must be jointly owned and operated by its members. As set forth in Section 3308(q), a medical cannabis dispensary may purchase or obtain cannabis only from members of the cooperative or collective and may sell or distribute cannabis only to members of the cooperative or collective. As set forth in Section 3308(c), a medical cannabis dispensary may operate only on a not for profit basis and pay only reasonable compensation to itself and its members and pay only reasonable out-of-pocket expenses.
- (g) "Medical Cannabis Identification Card" or "Identification Card" means a document issued by the State Department of Health Services pursuant to California Health and Safety Code Sections 11362.7 et seq. or the City pursuant to Health Code Article 28 that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any, or identifies a person as a primary caregiver for a medical cannabis patient.

- (n) "Permittee" means the owner, proprietor, manager, or operator of a medical cannabis dispensary or other individual, corporation, or partnership who obtains a permit pursuant to this Article.
- (i) "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "primary caregiver" as an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed clinic, a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1-3).
- (j) "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which states that a "qualified patient" means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have a valid medical cannabis identification card. For the purposes of this Article, a "qualified patient who has a valid identification card" shall mean a person who fulfills all of the requirements to be a "qualified patient" under California Health and Safety Code Section 11362.7 et seq. and also has a valid medical cannabis identification card

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3302. MEDICAL CANNABIS GUIDELINES.

Pursuant to the authority granted under Health and Safety Code section 11362.77, the City and County of San Francisco enacts the following medical cannabis guidelines:

- (a) A qualified patient, person with a valid identification card, or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient, person with a valid identification card, or primary caregiver may also maintain no more than twenty-four (24) cannabis plants per qualified patient or up to 25 square feet of total garden canopy measured by the combined vegetative growth area.
- (b) If a qualified patient, person with an identification card, or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient, person with an identification card, or primary caregiver may possess an amount of cannabis consistent with the patient's needs.
- (c) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3303. PERMIT REQUIRED FOR MEDICAL CANNABIS DISPENSARY.

Except for research facilities, it is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary without first obtaining a final permit pursuant to this Article. It is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary with a provisional permit issued pursuant to this Article.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3304. APPLICATION FOR MEDICAL CANNABIS DISPENSARY PERMIT.

- (a) Every applicant for a medical cannabis dispensary permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable permit application fee of \$8,459 to cover the costs to all City departments of investigating and processing the application and any applicable surcharges, exclusive of filing fees for appeals before the Board of Appeals. Beginning with fiscal year 2008-2009, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

- (b) The permit application form shall provide clear notice to applicants that the California Fire Code includes a requirement, among others that may apply, that an establishment obtain a place of assembly permit if it will accommodate 50 or more persons based on its square footage.
- (c) The applicant for a medical cannabis dispensary permit shall set forth, under penalty of perjury, following on the permit application:
1. The proposed location of the medical cannabis dispensary;
 2. The name and residence address of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

3. A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport for of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
4. Written evidence that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary is at least 18 years of age;
5. All felony convictions of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
6. Whether cultivation of medical cannabis shall occur on the premises of the medical cannabis dispensary;
7. Whether smoking of medical cannabis shall occur on the premises of the medical cannabis dispensary;
8. Whether food will be prepared, dispensed or sold on the premises of the medical cannabis dispensary; and
9. Proposed security measures for the medical cannabis dispensary, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(d) (NA).

(e) Applicants must be a cooperative or a collective. If the applicant is a cooperative organized under the Corporations Code, Sections 12300, et seq., or the Food and Agricultural Code, Sections 54002, et seq., the applicant shall set forth the name of the cooperative exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a collective organized as a 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, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a collective 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. If a corporation or a partnership is a stockholder owning more than 10 percent of the stock of a corporation or is one or more of the partners in a partnership, the provisions of this Section pertaining to the disclosure required for a corporation or partnership, as applicable, shall also apply to that entity.

(f) The Director is hereby authorized to require in the permit application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

- (g) The Department of Public Health shall make reasonable efforts to arrange with the Department of Justice and with DOJ-certified fingerprinting agencies for fingerprinting services and criminal background checks for the purposes of verifying the information provided under Section 3304(c)(5) and certifying the listed individuals as required by Section 3307(c)(4). The applicant or each person listed in Section 3304(c)(5) shall assume the cost of fingerprinting and background checks, and shall execute all forms and releases required by the DOJ and the DOJ-certified fingerprinting agency.

(Added by Ord. 271-05, File No. 051747, App. 11/30/2005; amended by Ord. 273-05, File No. 051748, App. 11/30/2005; Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3305. REFERRAL TO OTHER DEPARTMENTS.

- (a) Upon receiving a completed medical cannabis dispensary permit application and permit application fee, the Director shall immediately refer the permit application to the City's Planning Department, Department of Building Inspection, Mayor's Office on Disability, and Fire Department.
- (b) Said departments shall inspect the premises proposed to be operated as a medical cannabis dispensary and confirm the information provided in the application and shall make separate written recommendations to the Director concerning compliance with the codes that they administer.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3306. NOTICE OF HEARING ON PERMIT APPLICATION.

- (a) After receiving written approval of the permit application from other City Departments as set out in Section 3305, and notice from the Department of Building Inspection that it has approved a building permit, the Director shall fix a time and place for a public hearing on the application, which date shall not be more than 45 days after the Director's receipt of the written approval of the permit application from other City Departments.
- (b) No fewer than 10 days before the date of the hearing, the permit applicant shall cause to be posted a notice of such hearing in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated. The applicant shall comply with any requirements regarding the size and type of notice specified by the Director. The applicant shall maintain the notice as posted the required number of days.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3307. ISSUANCE OF MEDICAL CANNABIS DISPENSARY PERMIT.

- (a) Within 14 days following a hearing, the Director shall either issue a provisional permit or mail a written statement of his or her reasons for denial thereof to the applicant.
- (b) In recommending the granting or denying of a provisional permit and in granting or denying the same, the Director shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion he or she deems necessary to the peace and order and welfare of the public. In addition, prior to granting a provisional permit, the Director shall review criminal history information provided by the Department of Justice for the purpose of certifying that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary has not been convicted of a violent felony within the State of California, as defined in Penal Code section 667.5(c), or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may certify and issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit application and, that no subsequent felony convictions of any nature have occurred.
- (c) No medical cannabis dispensary provisional permit shall be issued if the Director 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 Article;
or
 - 3. That the operation as proposed by the applicant, if permitted, would not have complied will all applicable laws, including, but not limited to, the Building, Planning, Housing, Police, Fire, and Health Codes of the City, including the provisions of this Article and regulations issued by the Director pursuant to this Article; or
 - 4. That the permit applicant or any other person who will be engaged in the management of the medical cannabis dispensary has 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 within the State of California. However, the Director may issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date

or the permit application and, that no subsequent felony convictions of any nature have occurred; or

5. That a permit for the operation of a medical cannabis dispensary, which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary, has been revoked, unless more than five years have passed from the date of the revocation to the date of the application; or
 6. That the City has revoked a permit for the operation of a business in the City which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary unless more than five years have passed from the date of the application to the date of the revocation.
- (d) Applicants with provisional permits shall secure a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 307 and present it to the Director, and the Director shall issue the applicant a final permit.
 - (e) The Director shall notify the Police Department of all approved permit applications.
 - (f) The final permit shall contain the following language: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of State or Federal law."

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3308. OPERATING REQUIREMENTS FOR MEDICAL CANNABIS DISPENSARY.

- (a) Medical cannabis dispensaries shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.7 et seq., by this Article, by the Director's administrative regulations for the permitting and operation of medical cannabis dispensaries and by the AG's Guidelines.
- (b) Medical cannabis dispensaries shall be operated only as collectives or cooperatives in accordance this ordinance. All patients or caregivers served by a medical cannabis dispensary shall be members of that medical cannabis dispensary's collective or cooperative. Medical cannabis dispensaries shall maintain membership records on-site or have them reasonably available.
- (c) The medical cannabis dispensary shall operate on a not for profit basis. It shall receive only compensation for the reasonable costs of operating the dispensary, including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-of-pocket expenses

incurred in providing those services, or both. Reasonable out-of-pocket expenses may include reasonable expenses for patient services, rent or mortgage, utilities, employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited. Once a year, commencing in March 2008, each medical cannabis dispensary shall provide to the Department a written statement by the dispensary's permittee made under penalty of perjury attesting to the dispensary's compliance with this paragraph. Upon request by the Department, based on reasonable suspicion of noncompliance, the medical cannabis dispensary shall provide the Department copies of, or access to, such financial records as the Department determines are necessary to show compliance with this paragraph. Reasonable suspicion is defined as possession of specific and articulate facts warranting a reasonable belief that the dispensary is not complying with the requirement that it be not for profit. Financial records are records of revenues and expenses for the organization, including but not limited to Board of Equalization returns, payroll records, business expense records and income tax returns. The Director only shall disclose these financial records to those City and County departments necessary to support the Director's review of the records. Upon completion of the Director's review, and provided that the Director no longer has any need for the records, the Director shall return any financial records, and copies thereof, to the medical cannabis dispensary.

- (d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the State of California that has not left the State before arriving at the medical cannabis dispensary.
- (e) It is unlawful for any person or association operating a medical cannabis dispensary under the provisions of this Article to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such dispensary to remain open, or patrons to remain upon the premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department shall issue permits to two medical cannabis dispensaries permitting them to remain open 24 hours per day. These medical cannabis dispensaries shall be located in order to provide services to the population most in need of 24 hour access to medical cannabis. These medical cannabis dispensaries shall be located at least one mile from each other and shall be accessible by late night public transportation services. However, in no event shall a medical cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two medical cannabis dispensaries permitted to remain open 24 hours per day.
- (f) Medical cannabis dispensaries may not dispense more than one ounce of dried cannabis per qualified patient to a qualified patient or primary caregiver per visit to the medical cannabis dispensary. Medical cannabis dispensaries may not maintain more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area. Medical cannabis dispensaries shall use medical cannabis

identification card numbers to ensure compliance with this provision. If a qualified patient or a primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or the primary caregiver may possess and the medical cannabis dispensary may dispense an amount of dried cannabis and maintain a number cannabis plants consistent with those needs. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this Section.

- (g) No medical cannabis shall be smoked, ingested or otherwise consumed in the public right-of-way within fifty (50) feet of a medical cannabis dispensary. Any person violating this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of \$100. Medical cannabis dispensaries shall post a sign near their entrances and exits providing notice of this policy.
- (h) Any cultivation of medical cannabis on the premises of a medical cannabis dispensary must be conducted indoors.
- (i) All sales and dispensing of medical cannabis shall be conducted on the premises of the medical cannabis dispensary. However, delivery of cannabis to qualified patients with valid identification cards or a verifiable, written recommendation from a physician for medical cannabis and primary caregivers with a valid identification card outside the premises of the medical cannabis dispensary is permitted if the person delivering the cannabis is a qualified patient with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis or a primary caregiver with a valid identification card who is a member of the medical cannabis dispensary.
- (j) The medical cannabis dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Nor shall alcoholic beverages be consumed on the premises or on in the public right-of-way within fifty feet of a medical cannabis dispensary.
- (k) In order to protect confidentiality, the medical cannabis dispensary shall maintain records of all qualified patients with a valid identification card and primary caregivers with a valid identification card using only the identification card number issued by the State or City pursuant to California Health and Safety Code Section 11362.7 et seq. and City Health Code Article 28.
- (l) The medical cannabis dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.
- (m) The medical cannabis dispensary shall provide and maintain adequate security on the premises, including lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft.

- (n) Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.
- (o) All print and electronic advertisements for medical cannabis dispensaries, including but not limited to flyers, general advertising signs, and newspaper and magazine advertisements, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height except in the case of general advertising signs where it shall be a minimum of six inches in height. Oral advertisements for medical cannabis dispensaries, including but not limited to radio and television advertisements shall include the same language. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary carver.
- (p) The medical cannabis dispensary shall provide the Director and all neighbors located within 50 feet of the establishment with the name phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The medical cannabis dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other City officials.
- (q) Medical cannabis dispensaries may purchase or obtain cannabis only from members of the medical cannabis dispensary's cooperative or collective and may sell or distribute cannabis only to members of the medical cannabis dispensary's cooperative or collective.
- (r) Medical cannabis dispensaries may sell or distribute cannabis only to those members with a medical cannabis identification card or a verifiable, written recommendation from a physician for medical cannabis. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.
- (s) It shall be unlawful for any medical cannabis dispensary to employ any person who is not at least 18 years of age.
- (t) It shall be unlawful for any medical cannabis dispensary to allow any person who is not at least 18 years of age on the premises during hours of operation

unless that person is a qualified patient with a valid identification card or primary caregiver with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis.

- (u) Medical cannabis dispensaries that display or sell drug paraphernalia must do so in compliance with California Health and Safety Code §§ 11364.5 and 11364.7.
- (v) Medical cannabis dispensaries shall maintain all scales and weighing mechanisms on the premises in good working order. Scales and weighing mechanisms used by medical cannabis dispensaries are subject to inspection and certification by the Director.
- (w) Medical cannabis dispensaries that prepare, dispense or sell food must comply with and are subject to the provisions of all relevant State and local laws regarding the preparation, distribution and sale of food.
- (x) The medical cannabis dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Director in order to insure that the operation of the medical cannabis dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.
- (y) Medical cannabis dispensaries shall be accessible as required under the California Building Code. Notwithstanding the foregoing, if a medical cannabis dispensary cannot show that it will be able to meet the disabled access standard for new construction, it shall meet the following minimum standards:
 1. An accessible entrance;
 2. Any ground floor service area must be accessible, including an accessible reception counter and access aisle to the employee workspace behind; and,
 3. An accessible bathroom, with a toilet and sink, if a bathroom is provided, except where an unreasonable hardship exemption is granted.
 4. A "limited use/limited access" (LULA) elevator that complies with ASME A17.1 Part XXV, an Article 15 elevator may be used on any accessible path of travel. A vertical or inclined platform lift may be used if an elevator is not feasible and the ramp would require more than thirty percent (30%) of the available floor space.
 5. Any medical cannabis dispensary that distributes medical cannabis solely through delivery to qualified patients or primary caregivers and does not engage in on-site distribution or sales of medical cannabis shall be exempt from the requirements of this subsection 3308(y).
- (z) Any medical cannabis dispensary in a building that began the Landmark Initiation process (as codified by Article 10 of the San Francisco Planning Code) by August 13, 2007 is exempt from the requirements set forth in section 3308(y) of this legislation until September 1, 2008.

- (aa) Prior to submission of a building permit application, the applicant shall submit its application to the Mayor's Office on Disability. The Mayor's Office on Disability shall review the application for access compliance and forward recommendations to the Department of Building Inspection.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 318-08, File No. 081230, 12/19/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3309. PROHIBITED OPERATIONS.

All medical cannabis dispensaries operating in violation of California Health and Safety Code Sections 11362.5 and 11326.7 et seq., or this Article are expressly prohibited. No entity that distributed medical cannabis prior to the enactment of this Article shall be deemed to have been a legally established use under the provisions of this Article, and such use shall not be entitled to claim legal nonconforming status for the purposes of permitting,

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3310. DISPLAY OF PERMIT.

Every permit to operate a medical cannabis dispensary shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3311. SALE OR TRANSFER OF PERMITS.

- (a) Upon sale, transfer or relocation of a medical cannabis dispensary, the permit and license for the establishment shall be null and void unless another permit has been issued pursuant to this Article; provided, however, that upon the death or incapacity of the permittee, the medical cannabis dispensary may continue in business for six months to allow for an orderly transfer of the permit.
- (b) If the permittee is a corporation, a transfer of 25 percent of the stock ownership of the permittee will be deemed to be a sale or transfer and the permit and license for the establishment shall be null and void unless a permit has been issued pursuant to this Article; provided, however that this subsection shall not apply to a permittee corporation, the stock of which is listed on a stock exchange in this State or in the City of New York, State of New York, or which is required by law, to file periodic reports with the Securities and Exchange Commission.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3312. RULES AND REGULATIONS.

- (a) The Director shall issue rules and regulations regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries.
- (b) The Director may issue regulations governing the operation of medical cannabis dispensaries. These regulations shall include, but need not be limited to:
 - 1. A requirement that the operator provide patients and customers with information regarding those activities that are prohibited on the premises;
 - 2. A requirement that the operator prohibit patrons from entering or remaining on the premises if they are in possession of or are consuming alcoholic beverages or are under the influence of alcohol;
 - 3. A requirement that the operator require employees to wash hands and use sanitary utensils when handling cannabis;
 - 4. A description of the size and type of notice of hearing to be posted in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated and the number of days said notice shall remain posted; and
 - 5. A description of the size and type of sign posted near the entrances and exits of medical cannabis dispensaries providing notice that no medical cannabis shall be smoked, ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical cannabis dispensary and that any person violating this policy shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of \$100.
- (c) Failure by an operator to do either of the following shall be grounds for suspension or revocation of a medical cannabis dispensary permit: (1) comply with any regulation adopted by the Director under this Article, or (2) give free access to areas of the establishment to which patrons have access during the hours the establishment is open to the public, and at all other reasonable times, at the direction of the Director, or at the direction of any City fire, planning, or building official or inspector for inspection with respect to the laws that they are responsible for enforcing.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3313. INSPECTION AND NOTICES OF VIOLATION.

- (a) The Director may inspect each medical cannabis dispensary regularly and based on complaints, but in no event fewer than two times annually, for the purpose of determining compliance with the provisions of this Article and/or the rules and regulations adopted pursuant to this Article. If informal attempts by the Director to obtain compliance with the provisions of this Article fail, the Director may take the following steps:

1. The Director may send written notice of noncompliance with the provisions of this Article to the operator of the medical cannabis dispensary. The notice shall specify the steps that must be taken to bring the establishment into compliance. The notice shall specify that the operator has 10 days in which to bring the establishment into compliance.
 2. If the Director inspector determines that the operator has corrected the problem and is in compliance with the provisions of this Article, the Director may so inform the operator.
 3. If the Director determines that the operator failed to make the necessary changes in order to come into compliance with the provisions of this Article, the Director may issue a notice of violation.
- (b) The Director may not suspend or revoke a permit issued pursuant to this Article, impose an administrative penalty, or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.
- (c) If the Director concludes that announced inspections are inadequate to ascertain compliance with this Article (based on public complaints or other relevant circumstances), the Director may use other appropriate means to inspect the areas of the establishment to which patrons have access. If such additional inspection shows noncompliance, the Director may issue either a notice of noncompliance or a notice of violation, as the Director deems appropriate.
- (d) Every person to whom a permit shall have been granted pursuant to this Article shall post a sign in a conspicuous place in the medical cannabis dispensary. The sign shall state that it is unlawful to refuse to permit an inspection by the Department of Public Health, or any City peace, fire, planning, or building official or inspector, conducted during the hours the establishment is open to the public and at all other reasonable times, of the areas of the establishment to which patrons have access.
- (e) Nothing in this Section shall limit or restrict the authority of a Police Officer to enter premises licensed or permitted under this Article (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3314. VIOLATIONS AND PENALTIES.

- (a) Any dispensary, dispensary operator or dispensary manager who violates any provision of this Article or any rule or regulation adopted pursuant to this Article may, after being provided notice and an opportunity to be heard, be subject to an administrative penalty not to exceed \$1,000 for the first violation

of a provision or regulation in a 12-month period, \$2,500 for the second violation of the same provision or regulation in a 12-month period; and \$5,000 for the third and subsequent violations of the same provision or regulation in a 12-month period.

- (b) The Director may not impose an administrative penalty or take other enforcement action under this Article against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.
- (c) Nothing herein shall prohibit the District Attorney from exercising the sole discretion vested in that officer by law to charge an operator, employee, or any other person associated with a medical cannabis dispensary with violating this or any other local or State law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3315. REVOCATION AND SUSPENSION OF PERMIT.

- (a) Any permit issued for a medical cannabis dispensary may be revoked, or suspended for up to 30 days, by the Director if the Director determines that:
 - 1. the manager, operator or any employee has violated any provision of this Article or any regulation issued pursuant to this Article;
 - 2. the permittee has engaged in any conduct in connection with the operation of the medical cannabis dispensary that violates any State or local laws, or any employee of the permittee has engaged in any conduct that violates any State or local laws at permittee's medical cannabis dispensary, and the permittee had or should have had actual or constructive knowledge by due diligence that the illegal conduct was occurring;
 - 3. the permittee has engaged in any material misrepresentation when applying for a permit;
 - 4. the medical cannabis dispensary is being managed, conducted, or maintained without regard for the public health or the health of patrons;
 - 5. the manager, operator or any employee has refused to allow any duly authorized City official to inspect the premises or the operations of the medical cannabis dispensary;
 - 6. based on a determination by another City department, including the Department of Building Inspections, the Fire Department, the Police Department, and the Planning Department, that the medical cannabis dispensary is not in compliance with the laws under the jurisdiction of the Department.
- (b) The Director may not suspend or revoke a permit issued pursuant to this Article or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

- (c) Notwithstanding paragraph (b), the Director may suspend summarily any medical cannabis dispensary permit issued under this Article pending a noticed hearing on revocation or suspension when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter.
- (d) If a permit is revoked no application for a medical cannabis dispensary may be submitted by the same person for three years.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3316. NOTICE AND HEARING FOR ADMINISTRATIVE PENALTY AND/OR REVOCATION OR SUSPENSION.

- (a) If the Director determines that a medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article, he or she shall issue a notice of violation to the operator of the medical cannabis dispensary.
- (b) The notice of violation shall include a copy of this Section and the rules and regulations adopted pursuant to this Article regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries. The notice of violation shall include a statement of any informal attempts by the Director to obtain compliance with the provisions of this Article pursuant to Section 3313(a). The notice of violation shall inform the operator that:
 1. The Director has made an initial determination that the medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article; and
 2. The alleged acts or failures to act that constitute the basis for the Directors initial determination; and
 3. That the Director intends to take enforcement action against the operator, and the nature of that action including the administrative penalty to be imposed, if any, and/or the suspension or revocation of the operator's permit; and
 4. That the operator has the right to request a hearing before the Director within fifteen (15) days of receipt of the notice of violation in order to allow the operator an opportunity to show that the medical cannabis dispensary is operating in compliance with this Article and/or the rules and regulations adopted pursuant to this Article.
- (c) If no request for a hearing is filed with the Director within the appropriate period, the initial determination shall be deemed final and shall be effective fifteen (15) days after the notice of initial determination was served on the alleged violator. The Director shall issue an Order imposing the enforcement action and serve it upon the party served with the notice of initial determination. Payment of any administrative penalty is due within 30 days of

service of the Director's Order. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

- (d) If the alleged violator files a timely request for a hearing, within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. The Director shall make available all documentary evidence against the medical cannabis dispensary no later than fifteen (15) days prior to the hearing. Such hearing shall be held no later than forty-five (45) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.
- (e) At the hearing, the medical cannabis dispensary shall be provided an opportunity to refute all evidence against it. The Director shall conduct the hearing. The hearing shall be conducted pursuant to rules and regulations adopted by the Director.
- (f) Within twenty (20) days of the conclusion of the hearing, the Director shall serve written notice of the Director's decision on the alleged violation. If the Director's decision is that the alleged violator must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3317. APPEALS TO BOARD OF APPEALS.

- (a) Right of Appeal. The final decision of the Director to grant, deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article 1 of the San Francisco Business and Tax Relations Code. An appeal shall stay the action of the Director.
- (b) Hearing. The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article 1 of the San Francisco Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3318. BUSINESS LICENSE AND BUSINESS REGISTRATION CERTIFICATE.

- (a) Every medical cannabis dispensary shall be required to obtain a business license from the City in compliance with Article 2 of the Business and Tax Regulations Code.
- (b) Every medical cannabis dispensary shall be required to obtain a business registration certificate from the City in compliance with Article 12 of the Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3319. DISCLAIMERS AND LIABILITY.

By regulating medical cannabis dispensaries, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and licensing provisions of this Article, or for the activities of any medical cannabis dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Article shall not become a personal liability of any public officer or employee of the City. This Article (the "Medical Cannabis Act") does not authorize the violation of state or federal law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3320. SEVERABILITY.

If any provision of this Article or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3321. ANNUAL REPORT BY DIRECTOR.

- (a) Once a year, commencing in January 2007, the Director shall make a report to the Board of Supervisors that:
 - 1. sets forth the number and location of medical cannabis dispensaries currently permitted and operating in the City;
 - 2. sets forth an estimate of the number of medical cannabis patients currently active in the City;

3. provides an analysis of the adequacy of the currently permitted and operating medical cannabis dispensaries in the City in meeting the medical needs of patients;
 4. provides a summary of the past year's violations of this Article and penalties assessed.
- (b) Upon receipt of this Report, the Board of Supervisors shall hold a hearing to consider whether any changes to City law, including but not limited to amendments to the Health Code or Planning Code, are warranted.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

CITY AND COUNTY OF SAN FRANCISCO EDIBLES CODE



Medical Cannabis Dispensary (MCD) Regulations for Preparation of Edible Cannabis Products

1. No edible cannabis products **requiring** refrigeration or hot-holding shall be manufactured for sale or distribution at an MCD, due to the potential for food-borne illness. Exemptions may be granted by the San Francisco Department of Public Health on a case-by-case basis. For such exempted edible cannabis products, DPH may require a HACCP (Hazard Analysis and Critical Control Points) plan before approving the distribution of such medical cannabis products at MCDs. Such products requiring a HACCP plan may include ice cream and other dairy products.
2. Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at MCDs.
3. *(Items noted in this section are advisory only, as DPH does not intend to regulate edible cannabis production occurring in one's home.)* Preparation may be completed in a home-type kitchen equipped with a sink available for hand washing (this sink may be a dishwasher sink), liquid soap, and paper towels. No other food preparation should take place during the production of edible cannabis products, in order to avoid cross-contamination. During preparation, children and pets should not be in the kitchen/preparation area. Clean and sanitize all utensils, equipment, and food contact surfaces before and after preparation. Equipment and food contact surfaces should be in good, cleanable condition. Ingredient storage areas should be kept clean and vermin-free.
4. All items shall be individually wrapped at the original point of preparation. Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package. A warning that the item is a medication and not a food must be distinctly and clearly legible on the front of the package. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children. The label must also state that the product contains medical cannabis, and must specify the date of manufacture.
5. Packaging that makes the product attractive to children or imitates candy is not allowed. Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the dispensary. Deliveries must be in properly labeled opaque packages when delivered to the patient.



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

Gavin Newsom, Mayor
Mitchell H. Katz, M.D.
Director of Public Health

OCCUPATIONAL & ENVIRONMENTAL HEALTH

Rajiv Bhatia, M.D.
Director, Environ. Health

6. Individuals conducting the manufacturing or sale of products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible cannabis products.
7. In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible cannabis products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Anyone who has sores or cuts on their hands must use gloves when preparing and handling edible cannabis products.
8. Edible cannabis products for sale or distribution at an MCD must have been prepared by a member of that MCD. No non-member edible cannabis products are allowed for sale or distribution at an MCD.
9. A patient/caregiver who produces edible cannabis products that are sold at **more than one** MCD in San Francisco must become a State certified food handler. If more than one person is involved in producing edible cannabis products at one home or facility, only one person needs to be certified. The valid certificate number of the member who has prepared the edible cannabis product must be on record at the MCD where the product is sold or distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

Medical Cannabis

Dispensary Inspection
Program

1390 Market Street, Suite 210
San Francisco CA, 94102

Phone (415) 252-3841
fax (415) 252-3910

**COLLECTIVE CULTIVATION & TRANSPORTATION
AGREEMENT**

[REDACTED] Collective Cultivation & Transportation Agreement

I. Preamble & Definitions

1.1 Parties to the Agreement

This Agreement is made between [REDACTED] (hereinafter "Collective") and [REDACTED] (hereinafter "Member"), both of which are sometimes referred to collectively herein as the "Parties."

1.2 Purpose of Agreement

It is the purpose of the Parties to this Agreement to associate for the purposes of creating a closed-circuit for the cultivation, transportation, distribution and consumption of cannabis for medical purposes on behalf of the Collective and its members, in accordance with California Health and Safety Code § 11362.775.

1.3 Definitions

(a) **Qualified Patient** is defined as an individual residing in California who has received a recommendation for the use of medical cannabis from a physician in good standing in the practice of medicine. The recommendation must be based on a finding that the person's health would benefit from the use of cannabis in the treatment any illness for which cannabis provides relief, under California Health and Safety Code § 11362.5.

(b) **Primary Care Provider** is defined as a care provider designated by a medical cannabis patient who consistently assumes responsibility for the housing, health, or safety of that person, pursuant to California Health and Safety Code 11362.5. In *People v. Mentch* (2008), the California Supreme Court determined that the care given must be independent of any assistance in taking medical cannabis, and that the care must occur at or before the time the caregiver assumes responsibility for assisting with medical marijuana.

(c) **Cannabis** is defined as the dried mature processed flowers of a female cannabis plant or the plant conversion, in accordance with California Health and Safety Code 11362.77.

(d) **Identification card** is defined as a document issued by the California Department of Health Services that identifies persons authorized to engage in medical use of marijuana and their primary caregiver, if any, pursuant to California Health and Safety Code §11362.7.

(e) **Collective** is defined as an organization registered as a corporation with the Department of Food and Agriculture that facilitates the collaborative efforts and transactions of its medical cannabis patient and caregiver members, authorized by California Health and Safety Code § 11362.775.

(f) **Member** is defined as a qualified patient or primary care provider, who has been accepted as a constituent of the Collective pursuant to a valid membership agreement.

(g) **Exhibit A** refers to the authorized Member's Collective Membership Application, a sample of which is attached hereto and incorporated by reference herein to this Agreement.

(h) **Exhibit B** refers to the Collective's membership base information, which is attached hereto and incorporated by reference herein to this Agreement.

II. Authorization to Cultivate & Transport

2.1 Authorization

Pursuant to California Proposition 215, Senate Bill 420, California Health and Safety Code § 11362.5 and § 11362.775, and the guidelines set forth by the Attorney General of the State of California, this Agreement, and in compliance therewith, Member is hereby authorized to cultivate and transport medical cannabis on behalf of this Collective and its members.

2.2 Quantity

(a) **Individual Quantity.** Each qualified patient and primary care provider in this Collective, as previously defined in section 1.3(f) and hereinafter referred to throughout as "Member" may use an amount of medical cannabis reasonably necessary for their (or their charge's) personal medical needs. **Members are not subject to specific limits for their use of medical cannabis.** In *People v. Kelly* (2010), the California Supreme Court invalidated prosecution (of Members) under California Health and Safety Code § 11362.77 to the extent that it impermissibly amends these rights by adding specific cannabis quantity limitations.

(b) **Collective Quantity.** When cultivating or transporting medical cannabis for a collective, an authorized collective member may provide a quantity of cannabis equal to a **reasonable aggregate amount tied to its membership numbers**, in accordance with the Attorney General Guidelines. Pursuant to this Agreement, Member is legally authorized to cultivate and transport the aggregate amount reasonably necessary to provide for this Collective's 4500 members. Collective has verified its patient members have current recommendations from physicians, and that the Collective's members are current California residents.

(c) **Documentation.** This Agreement, in conjunction with the attachments **Exhibits A and B**, shall be made readily available for review by state enforcement officials when transporting or cultivating cannabis on behalf of the Collective. Due to the strict privacy requirements as set out by the Health Insurance Portability and Accountability Act Privacy Rule (hereinafter "HIPAA"), however, patient records and recommendations will remain in a secure location off site. **If state enforcement officials have any questions about HIPAA or Collective's secured patient information and documents, they may contact our criminal defense lawyer, Ean Vizzi, at (415) 834-2141 (office), or (415) 240-8004 (mobile).**

- i. *HIPAA protects individuals' medical records and other individually identifiable health information, created, or received by or on behalf of covered entities, which include health care plans, clearinghouses, physicians, and business associates of these covered entities (hereinafter collectively referred to as "CEs"). HIPAA protects individuals' health information by regulating the circumstances under which CEs may use or disclose patient information,*

and by requiring CEs to have safeguards in place to ensure they protect the privacy of patient health information.

2.3 Exemption from Criminal Sanctions and Arrest

(a) **Collective Exemptions.** In accordance with California Health and Safety Code § 11362.775, qualified patients and primary caregivers who associate within the State of California to cultivate and transport cannabis as a collective for medical purposes shall not be subject to criminal sanctions for any of the following:

- i. **Possession or Sale** of medical cannabis under California Health and Safety Code § 11357 & § 11359.
- ii. **Cultivation** of medical cannabis under California Health and Safety Code § 11358.
- iii. **Transportation and Distribution** of medical cannabis under California Health and Safety Code § 11360.
- iv. **Maintaining a Facility for Storage, Manufacture, Distribution, or Sale** of medical cannabis under California Health and Safety Code § 11366, § 11366.5, and actions for nuisance for this use under § 11570.

(b) **Identification Card.** In accordance with California Health and Safety Code § 11362.71 (e), an officer **may not arrest** a Member in possession of a valid identification card for possession, transportation, delivery, or cultivation of reasonable quantities of medical cannabis as enumerated above, unless they have reasonable cause to believe the card has been falsified. See also *People v. Kelly*.

(c) **Without Identification Card.** If an individual does not have an identification card, the Attorney General Guidelines indicate that the officers should review any written documentation to determine the validity of the medical use claim under the totality of the circumstances. If the officer reasonably believes that the cannabis is for medical use, the individual should be released and the cannabis should not be seized. **Please be advised, potential monetary damages may be awarded to Collective and Member (including attorneys' fees) if enforcement officers unlawfully seize or destroy medical cannabis.** See *County of Butte v. Superior Court* (2009).

(d) **Enforcement.** In accordance with the California Constitution, Article III, Section 3.5(c), **state enforcement officials cannot refuse to enforce these state statutes** on the basis that federal law prohibits the enforcement of the state statute. In *Qualified Patients v. City of Anaheim* (2010), the Fourth District California Court, citing the Court's prior decision in *City of Garden Grove v. Superior Court* (2007), held that the Federal Controlled Substances Act (21 U.S.C. § 812) did not preempt the California medical cannabis statutes. "It is not the job of the local police to enforce the federal drug laws." *City of Garden Grove*.

(e) **Civil liability for violation of exemptions.** A California Appellate Court recently **forced the County of Butte to pay a Member's attorneys fees, which equated to more than \$100,000.00.** In *County of Butte v. Superior Court* (2009), the Third District Appellate Court found the sheriff's office liable for ordering the destruction of cannabis plants used for medical purposes that were lawfully grown for a Collective's Members. If a Member can show

they had a legal right to possess, sell, grow, transport, or manufacture cannabis for medical purposes, using the reasonable aggregate amount of the medical cannabis tied to the Collective's membership numbers as set out in *People v. Kelly*, and a state enforcement official violates these rights, the Member has a right to bring (and will bring) an action for monetary damages against each individual law enforcement officer, as well as the enforcement branch involved in such unlawful conduct.

III. Member Responsibilities

3.1 Member Agreement

(a) **Membership Agreement.** Notwithstanding the following requirements and responsibilities, Member hereby agrees to strict compliance with all of the terms and conditions in Collective's Membership Application.

(b) **Legal Requirements.** Abide by all requirements and restrictions regarding medical cannabis as set forth in Proposition 215, SB420, California Health & Safety Code § 11362.5 (Compassionate Use Act) and § 11362.7, et seq (Medical Marijuana Program Act) in addition to all local regulations.

(b) **Contribution.** Possess the expertise, skill, know-how, ability, or financial resources to allow the Collective to grow safe, high-quality medical cannabis in accordance with the applicable laws of the State of California. The cultivation of medical cannabis does not require physical participation in the gardening process by all members of the Collective. Rather, some Members may "contribute financially, while others perform the labor and contribute through skill and know-how." See *County of Butte v. Superior Court*.

(c) **Acquisition, Transportation and Distribution.** Acquire cannabis for medical purposes (only) from other Collective members, and implement policies, procedures and protocols to ensure the medical cannabis is transported and **distributed only to other members of the Collective**. Pursuant to *People v. Mentch* and the **Attorney General Guidelines**, the cycle should be a closed-circuit of medical cannabis cultivation, transportation, distribution and consumption with no purchases or sales to or from non-members.

(d) **Medical Use Only.** Prevent diversion of medical cannabis for any non-medical purposes at all costs. All Collective members, including those cultivating, transporting, distributing and warehousing medical cannabis for the Collective, must actively qualify as a qualified patient or primary care provider to participate in the Collective and to receive medical cannabis. **Non member use or distribution is strictly prohibited.**

(e) **Expenses and Costs.** Members may be required to contribute funds or labor or share in the overall expenses and costs of the production and distribution of medical cannabis in order to participate in the Collective. All funds accrued by the Collective related to the production and distribution of medical cannabis will be reasonably redistributed back to the producing members after taking in consideration the operating costs of Collective.

(f) **Taxes.** Member shall pay their own individual California State and Federal taxes for any reimbursements received from Collective related to the Collective's production and distribution of medical cannabis amongst its members.

(g) **Prohibited Conduct.** Avoid possessing weapons, scales, or small bags for individualized packaging while cultivating or transporting Collective medical cannabis.

(h) **Cultivation.**

- i. Cultivate medical cannabis in an amount reasonably necessary for Members, using a reasonable aggregate amount of medical cannabis directly tied to the Collective's membership numbers as set out in *People v. Kelly*. See Exhibit "B".
- ii. Secure the cannabis plants with a sturdy lockable gates or doors to protect from burglary and theft.
- iii. Avoid nuisance complaints by blocking visibility of plants to the public and reducing aroma.
- iv. Restrict growing medical cannabis for no more than (3) member recommendations, if Member is cultivating in a residentially zoned area.
- v. Submit to annual application submission, on-site inspections, and a compliance review by a non-conflicted third party inspector and certifier as part of the **C³ Certification Program**.
- vi. Destroy any waste product (i.e., portions of the plant not used for medicinal purposes) through composting, incineration or other method approved by the planning director in accordance with the Humboldt County District Attorney's Health and Safety Code 11357-11360.

(i) **Transportation.**

- i. Refrain from operating a motor vehicle for the transportation of the Collective medical cannabis in a way that violates the California Vehicle Code, California Health & Safety Code, or California Penal Code.
- ii. Limit transportation of medical cannabis to an amount reasonably necessary for the Collective's Members, using a reasonable aggregate amount of medical cannabis directly tied to the Collective's membership numbers as set out in *People v. Kelly*. See Exhibit "B".
- iii. Limit transportation of Collective medical cannabis to the State of California.

(h) **Additions.** Implement any additional protocols that the Collective may require, and abide by such additional protocols as amended, modified, or expanded from time to time.

3.2 Termination

Failure to fulfill these enumerated requirements, or the terms and conditions of Collective's Membership Application, or to maintain lawful and active Collective membership status, shall result in the **immediate termination of this Agreement** and Member's membership interest

in Collective. In the event of such termination, the (now) Terminated Member shall no longer be authorized by Collective to cultivate or transport any medical cannabis on behalf of the Collective's membership. Continuing to cultivate and/or transport cannabis under such circumstances may subject the Terminated Member to arrest and/or incarceration by enforcement officers.

IV. Warranty

4.1 Parties Joint Warranty

The Parties warrant that they have abided by all applicable laws and statutes, including but not limited to any and all statute and case law identified in this Agreement. The Parties further warrant that they are not currently in violation of any applicable laws or statutes, and to their knowledge are not currently being investigated for or involved in any litigation concerning cannabis possession, cultivation, transportation or distribution.

4.1 Member Warranty

Member warrants that in the event they are convicted of committing a crime that they have acted outside the scope of their role as a Member of the Collective. Member warrants that they are a current Member of this Collective in good standing. Should Member discontinue membership in the Collective, or fall out of good standing with the Collective, then Member shall immediately stop possessing, cultivating, transporting, or distributing cannabis on behalf of Collective and its members, and this agreement shall immediately become suspended until Member has returned to full membership status in good standing with Collective.

V. Confidential Information

5.1 Member acknowledges that Member will have access to certain confidential information concerning the Collective and its members, including but not limited to medical records, and members' personal or private information. Member expressly agrees that Member shall not communicate, disclose or make available any part of this information to any third party, except as legally required, to avoid arrest or prosecution, or to further the express interests of the Collective. Member agrees that Member shall exhaust all best efforts to prevent inadvertent disclosure of this information at anytime. Member further agrees that Member shall not copy or use, nor permit others to copy or use, directly or indirectly, any other member's information other than for the purpose of the actions as contemplated by this Agreement. Member shall take special care to prevent the inadvertent disclosure of this information.

VI. Indemnification and Limitation on Liability

6.1 Indemnification

Member shall indemnify and hold harmless Collective, its subsidiaries, affiliates and co-ventures, and the officers, directors, employees and agents, and each of them, from any and all claims, losses, liabilities, damages, costs (including reasonable attorneys' fees), suits or judgments arising out of the acts and/or omissions, whether negligent and/or intentional, of Member, its subsidiaries, affiliates and co-ventures, its officers, directors, employees and agents, and each of them.

6.2 Limitation on Liability

In the event of termination by either of the Parties in accordance with any of the provisions of this Agreement, neither of the Parties shall be liable to the other, because of the termination for compensation, reimbursement or damages on account of the loss of expenditures, investments, leases or commitments in connection with the business or goodwill of the Collective or Member. The Collective's sole liability under the terms of this Agreement shall be for any unpaid reimbursements as provided in this Agreement.

VI. Miscellaneous Terms and Conditions

7.1 Integration

This Agreement contains the entire agreement between Company and Contractor concerning the engagement of Contractor by Company and constitutes the complete and integrated contract expressing the entire agreement of Company and Contractor relative to the subject matter hereof and thereof.

7.2 Modification

No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by both parties.

7.3 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

7.4 Non-Assignable

Member agrees that their rights and obligations under this Agreement may not be transferred, delegated or assigned directly or indirectly, without prior written consent of the Collective. Any assignment made without the prior written consent of the Collective shall be null and void.

7.5 Severability

The provisions of this Agreement are divisible. If any such provision of this Agreement is determined to be void, voidable, unenforceable, or invalid, that provision shall be deemed limited to the extent necessary to render it valid and enforceable and the remaining portions hereof and thereof shall be construed and enforced so as to best effectuate the intention of Parties at the time this Agreement was entered into and shall remain in full force and effect.

7.6 Advice of Counsel

The Parties acknowledge that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any Party by reason of the drafting or preparation hereof.

7.7 **Headings**

The headings and/or captions used in connection with this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

7.8 **Waiver**

No delay or omission by the Parties in exercising any right under this Agreement shall operate as a waiver of that or any other right. No waiver of any provision of this Agreement, or consent to any departure by the Parties from any provision of this Agreement, or consent to any departure by the Parties from any provision, shall be effective in any event unless it is in writing, designated a waiver, and signed by the party waiving the breach. Such a waiver shall be effective only in the specific instance and for the purpose for which it is given.

VIII. Disclaimer

8.1 **Please be advised**, despite California's medical cannabis laws and the terms and conditions of this Agreement, California medical cannabis cultivators, transporters, distributors or possessors may still be arrested by federal officers and prosecuted under federal law. The Federal Controlled Substance Act (21 U.S.C. § 801) prohibits the manufacture, distribution, and possession of cannabis without any exemptions for medical use under the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have each executed this [REDACTED] *Collective Cultivation & Transportation Agreement* to be effective as of August 15, 2010.

COLLECTIVE:

MEMBER:

[REDACTED] COLLECTIVE
[REDACTED]
Sign: [REDACTED]

[REDACTED]
Sign: _____

Name: [REDACTED]
Title: Executive Director

Name: [REDACTED]
Title: Member/Cultivator

"ORGANIC" RESEARCH

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WINTER LLP

Memo

To: C3
From: WINTER LLP
CC:
Date: November 5, 2011
Re: "Organic" Labeling on Cannabis Products

ISSUE

1. What are the federal and state regulations regarding the use of the term "organic" in product labeling?
2. What are the federal and state regulations regarding the use of the term "ORCANNIC" in product labeling?

BRIEF ANSWER

1. The use of the term "organic" is highly regulated by the USDA, and would more than likely prohibit its use for labeling cannabis products. Certification at the state level is also prohibited because the process requires approval by the USDA.
2. Federal regulations prohibit the use of any label or marketing information which implies that the product was produced using organic methods. However, other terms with related (but not necessarily synonymous) meanings, such as "natural" or "pesticide free" may still appear on product labels without violating these regulations.

DISCUSSION

1. Use of the term "organic" in product labels is highly regulated by the USDA. Cannabis products will not be certified because cannabis is a prohibited controlled substance.

Federal law strictly prohibits the use of the word "organic" to describe the production and handling of agricultural products unless the manufacturer has adhered to specific standards, which are monitored by the National Organic Program, a division of the United States Department of Agriculture (USDA).

An agricultural product is defined as “any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.” (7 U.S.C. § 6502(1).) The following statute describes the national standard for organic production:

To be sold or labeled as an organically produced agricultural product under this chapter, an agricultural product shall –

- (1) have been produced and handled without the use of synthetic chemicals, except as otherwise provided in this chapter;
- (2) except as otherwise provided in this chapter and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products; and
- (3) be produced and handled in compliance with an organic plan agreed to by the producer and handler of such product and the certifying agent.

7 U.S.C. § 6504.

This chapter of regulations does not divulge any other details as to what may be considered an agricultural product marketed for human consumption. However, other government resources list the following as types of organic products recognized by the USDA: fresh produces, meat, poultry, eggs, bakery products, including juices and milk and processed foods, cotton fiber, flowers, and some personal care products such as cosmetic, hygiene products, and cleaning supplies. (California Dept. of Food and Agriculture – California Organic Program, *available at* http://www.takechargeca.ca.gov/besmart/green_organic.shtml).

Although there is no explicit law prohibiting the submission of an illegal drug for certification by the National Organic Program, there is a presumption that the production method of any agricultural product and the product itself must be legal. Because cannabis is currently listed as a Schedule I controlled substance under federal law, NOP is likely not to consider a cannabis product for organic certification.

Manufacturers of agricultural products are prohibited from using the word “organic” in its label and market information if it has not obtained USDA certification. The relevant law states: “a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this chapter.” (7 U.S.C. § 6505(a)(1)(A).) Because it is unlikely the USDA would even consider certifying an illegal controlled substance and because a product may not be labeled as “organic” without this certification, our client should not market its product as organically produced.

2. Federal law prohibits the use of any term which merely implies that the product is produced and handled under the strict federal standards.

The use of the word “orcannic” may be prohibited by federal law if the use of this term implies either directly or indirectly that the products are produced and handled by methods in accordance with the federal standard. The law states:

No person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.

7 U.S.C. § 6505(a)(1)(B).

However, this issue may be resolved if use of the term “orcannic” is accompanied by a disclaimer that the product is not reviewed for certification by the USDA because of the product’s status with regard to federal regulation but that the company adheres to the highest standard in the industry by creating and implementing production methods that are free of pesticides, synthetic fertilizers, etc. This disclaimer would clarify any ambiguity about the product attempting to adhere to any nationally standardized method. The USDA does not regulate nor prohibit the use of any descriptive terms such as “natural,” “pesticide free,” “hormone free,” or other similar descriptions. At most, consumers are warned not to confuse the term “natural” with “organic.” (California Dept. of Food and Agriculture, *available at* http://www.takechargeca.ca.gov/besmart/green_organic.shtml.) So long as the term “orcannic” is accompanied in its market information by an explicit description that there is no nationally recognized production method for its cannabis products and consequently that the products are not USDA organic certified, then the term “orcannic” could not imply either directly or indirectly that it adheres to any such USDA standard and would not be in violation of the aforementioned statute.

CONCLUSION

Any labeling suggesting that an agricultural product is organic must adhere to the strict standards and certification process set out by the National Organic Program, a division of the USDA. Because cannabis is federally recognized as an illegal controlled substance, it is highly unlikely that the USDA would consider certifying cannabis production methods and products.

On the other hand, one may argue that the term “orcannic” should not be prohibited if it is accompanied with information that this is not a federally recognized production method and should not be confused with the USDA organic labels. There would be no implication that it is certified by the federal government, either directly or indirectly, because the disclaimer would unambiguously state that there is no federal standard with regard to cannabis and therefore cannot be evaluated under any such federal standards. To put it more positively, the marketing information should also describe the manufacturer’s attempts to create and implement a higher standard for the cannabis production industry which would encourage growers to not use pesticides, synthetic fertilizers, etc.

HGA OUTDOOR PROPOSAL



HUMBOLDT GROWERS ASSOCIATION

Humboldt County Outdoor Medical Cannabis Ordinance Presented to Humboldt County December 13, 2010

This paper was written with the intention of providing greater insight into the Outdoor Medical Cannabis Ordinance presented to the Humboldt County Board of Supervisors by the Humboldt Growers Association in September 2010. During the past couple of months, the HGA Board of Directors and its Advisory Board Members have been active in the community and have received feedback regarding the original draft of this ordinance. There has been both support and concern expressed by various community members. Primarily, the HGA has grown increasingly concerned that the 40,000 square foot permit, which is the maximum permit size recommended in the original ordinance proposal, is much too large. At this point, the HGA would like to recommend the maximum permit size be capped at 20,000 square feet of mature plant canopy. The concerns expressed by the community, which have largely led the HGA to take this new stance, are as followed.

When the HGA first wrote this proposal, we were very optimistic that Prop. 19 would pass during the November 2010 elections. Due to its failure at the polls, there appears to be a heightened sense of concern regarding the potential for involvement by the Federal Government in local policies regulating the cultivation of medical cannabis. By reducing the maximum permit size to 20,000 square feet of mature canopy, there is less likeliness in provoking the involvement of the Federal Government. Please refer to the section titled Mature Plant Canopy for further explanation on plant counts for the various permit sizes.

Other concerns expressed include the ability for Humboldt County to “brand” its international reputation for high quality cannabis. It is known amongst growers that the smaller cultivation sites tend to yield a higher quality product - where as larger grows tend to be less meticulously cared for and have a greater chance of producing substandard quality. This also speaks to the numerous comments throughout the community to not allow Humboldt to become “factory farmed” for the sake of preserving the economic

value of the cannabis in the county. If Humboldt is to hang on to, and eventually brand, its well-known name than the quality of product coming out of the county should be of utmost importance. All of these issues must be addressed while taking into consideration the ability for this industry to be sustainable. Humboldt County has already lost large amounts of revenue from both logging and fishing due to poor environmental practices. It is the goal of the Humboldt Growers Association to promote a safe and sustainable cannabis industry that can serve as a model of success to other communities.

Due to concerns expressed regarding large outdoor grows in residential areas, it is recommended that the county adopt a policy of requiring cultivation sites larger than 401 square feet be on a minimum parcel size of five acres.

In the following pages of this paper the HGA has expanded upon the *Original Draft Ordinance* to include specific reasons for the inclusion of various provisions. We have also included a suggestion to lower the recommended fee schedule for the permits and have included a section on the Cost to Set Up and Maintain Cultivation Sites. In the current uncertain political climate the market value for outdoor cannabis has dropped by 30% from last year. Growers are nervous about their future in the cannabis industry. With legalization looming in the near future there is increasing instability in the already fragile cannabis market place. It is also important that Humboldt County prices accordingly with its neighboring counties such as Mendocino. We have attached and reference the Mendocino County Outdoor Medical Cannabis Ordinance. It contains some well-thought-out pieces to the cannabis puzzle that can easily be adapted to the Humboldt County Outdoor Medical Cannabis Ordinance. Please participate in this process to preserve the future of cannabis in Humboldt County by reading this information thoroughly and asking questions as they may arise. Question can be directed to the Humboldt Growers Association via email at info@humboldtgrowers.org.

Water Usage

As the HGA was working on drafting this ordinance proposal it became clear that there needed to be math behind the process. The group looked at various ordinances and agreed to base all math on a mature cannabis plant having a canopy area of 5'x5' or 25 square feet per plant. All numbers generated are based on this mature plant size. It is also important to note that, for the purposes of water usage and amendment costs, we utilized a cultivated area that is 5'x5' and 1' deep. This size hole, pot, bed, etc., we believe, can easily produce a plant that is 5'x5'. There is much evidence to support that these are middle range or average figures to work with.

Generally, with this size of area to keep moist throughout a growing season farmers will gravitate toward soaker hose or emitter line of some sort. Trying to figure out the water flow rates of soaker hose is somewhat problematic in that soaker hose emits differently depending on the amount of water pressure available. For this reason we chose to base water rates on the use of ½ inch irrigation line that has imbedded emitters every 9". This is a very popular product and due to the built in diaphragms each emitter allows for the same amount of water to flow, one gallon per hour. If a farmer is to utilize

4 rows of this emitter tubing to water their 5'x5'x1' cultivated space they would be utilizing about 24 emitters at a flow rate of one gallon per hour. With this amount of water available per watering it is reasonable to water for about 30 minutes every other day. This would utilize approximately 12 gallons of water with each watering per plant. This averages at 6 gallons per plant per day.

These numbers account for a watering season that runs from June thru October. Please note that this watering period can vary greatly. If it is a very wet spring the planting season may be delayed and conversely if it is a dry spring the planting season may be in May. I would also like to note that October also has variables associated with water usage. There is the potential for cannabis to finish in September. This is largely strain and growing style dependent. In a five-month period there are approximately 150 days multiplied by 6 gallons of allotted water usage per plant per day and each plant may consume 900 gallons per season. The following information is an estimate of water usage for various size permits.

Water Usage Based on 5' x 5' Plants

- 5,000 sq. ft. = 180,000 gallons of water
- 10,000 sq. ft. = 360,000 gallons of water
- 20,000 sq. ft. = 720,000 gallons of water
- 40,000 sq. ft. = 1,440,000 gallons of water

I believe that these numbers will likely stay in this range no matter what the size of plants a farmer decides to grow. Remember, that if a farmer decides to grow smaller plants he will have more of them and if he decides to grow larger plants he will simply be watering a larger space per plant.

Mature Plant Canopy

The term mature plant canopy refers to the square footage the cannabis plants occupy at their largest size or most mature potential. The cannabis plant will continue to grow in size until about the 5th week of bloom. For this reason, second inspections should be done in July and August. For all calculations done in association with the writing of this ordinance the group utilized an average mature plant canopy size of 5' x 5' or 25 square feet per plant. With this number in mind it is relatively easy to figure out the estimated number of plants associated with each size permit. I have also included information for plants averaging 7' x 7' and plants averaging 10' x 10'. These numbers are included to provide a basis for understanding the potential for plant count numbers for various size permits.

Estimated Plant Count if Plants Average 25 sq. ft.

- 5,000 sq. ft. = 200 plants
- 10,000 sq. ft. = 400 plants
- 20,000 sq. ft. = 800 plants
- 40,000 sq. ft. = 1600 plants

Estimated Plant Count if Plants Average 49 sq. ft. or 7'x7'

- 5,000 sq. ft. = 102 plants
- 10,000 sq. ft. = 204 plants
- 20,000 sq. ft. = 408 plants
- 40,000 sq. ft. = 916 plants

Estimated Plant Count if Plants Average 100 sq. ft. or 10'x10'

- 5,000 sq. ft. = 50 plants
- 10,000 sq. ft. = 100 plants
- 20,000 sq. ft. = 200 plants
- 40,000 sq. ft. = 400 plants

Plant size will largely be determined by farming techniques such as planting time, cultivated area of each plant, amendment usage and water usage. The earlier in the spring the plant is started the larger its potential size. The larger the container, the larger the potential plant size. Well-fed plants tend to grow larger. Please note that permits of 401 square feet and larger will need to be on a parcel size of 5 acres or larger. Also cultivated areas of 1-100 square feet will not require a permit.

Estimated Cost to Set Up and Maintain Cultivation Sites

These numbers are based on each 25 sq. ft. of mature plant canopy occupying a cultivated space of 5' x 5' x 1' deep. I believe that the cost to set up fewer larger plants verses more, smaller plants tends to equal itself out. This can be explained by recognizing that larger plants require more room for their roots to grow. Therefore, if you have larger plants you have more cultivated space. Also, application rates for amendments tend to be based on the square footage of cultivated area so these numbers should be pretty accurate not matter what the style of the farmer.

Soil Costs to Set Up Cultivation Sites

These numbers are based on a container size of 5' x 5' x 1'. Using these dimensions each container will take 25 cubic feet of soil, which is the equivalent to 16.6 bags at 1.5 cubic foot of soil per bag. There are many choices available for soil in the county. These prices are based on the ever so popular soil Black Gold. This is one of the only OMRI approved soils, comes in a 1.5 cubic foot bag, and retails for \$8.00 a bag.

- 5,000 sq. ft. = 3,334 bags of soil at \$8.00 per bag = \$26,672 before tax
- 10,000 sq. ft. = 6640 bags of soil at \$8.00 per bag = \$53,120 before tax
- 20,000 sq. ft. = 13,280 bags of soil at \$8.00 per bag = \$106,240 before tax
- 40,000 sq. ft. = 26,560 bags of soil at \$8.00 per bag = \$212,480 before tax

There are questions of sustainability with this type of large scale potting soil usage. In the southern Humboldt area, the Redway Transfer Station does not recycle potting soil or amendment bags. Numbers such as these can put vast amounts of plastic into local landfills. It may be wise to have the inspectors for these permits be educated

on recycling cites and natural production methods (these allow for the repeated use of potting soil from one season to the next).

Amendments

Most farmers will be amending their soil on a yearly basis. If a farmer uses the Black Gold soil mentioned above they will still need to amend each hole or bed. This is true for most soils purchased at local nurseries. Potting soil tends to be mostly void of nutrients. The following list outlines the amount and pricing for amendments commonly utilized during cannabis production. Again, this explanation refers to the amounts necessary for a 5' x 5' x 1' cultivated area.

General Amendment Recipe

- ½ bag of Stetzman chicken manure @ \$3.75 per bag (*\$1.875 per plant*)
- 1 lb of high nitrogen bat guano @ \$1.50 per pound (*\$1.50 per plant*)
- 1 lb of fossilized seabird pellets @ \$55.00 per 50 lb. bag (*\$1.10 per plant*)
- 2 lbs of green sand @ \$24.00 per 50 lb. bag (*\$.96 per plant*)
- 1 lb of oyster flour @ \$7.00 per 50 lb. bag (*\$.14 per plant*)
- 1 lb of gypsum @ \$12.00 per 50 lb. bag (*\$.24 per plant*)
- ½ lb of kelp @ \$66.00 per 50 lb. bag (*\$.66 per plant*)
- 1 lb of steamed bone meal @ \$40.00 per 50 lb. bag (*\$.80 per plant*)
- 1 lb of Black Castings (OMRI worm castings) @ \$38.00 per 40 lb. bag (*\$.95 per plant*)
- 1 lb of Baseline Humus @ \$60.00 per 50 lb. bucket (*\$1.20 per plant*)
- 1 bale of compost (1/2 bale to mixed into soil and the other ½ to be used as a mulch) @ \$10.00 per bale (*\$10 per plant*)
- Cost per plant = \$19.43 per plant so lets call it \$20 per plant to keep it simple

Amendment Cost According to Permit Size

- 5,000 sq. ft. = \$4,000 before sales tax
- 10,000 sq. ft. = \$8,000 before sales tax
- 20,000 sq. ft. = \$16,000 before sales tax
- 40,000 sq. ft. = \$32,000 before sales tax

Please note that each farmer can expect additional expenses such as pots, seeds, clones, timers, irrigation line, water clamps, staking materials, and nutrients throughout the growing season. Each farmer will also accrue labor expenses. Below is an outline of expected labor expenses. Labor expenses include 8 hr of labor per plant at \$25 per hour as well as processing costs.

Labor and Processing Expenses

- 5,000 sq. ft. = \$40,000 labor + \$100,000 processing = \$140,000
- 10,000 sq. ft. = \$80,000 labor + \$200,000 processing = \$280,000
- 20,000 sq. ft. = \$160,000 labor + \$400,000 processing = \$560,000
- 40,000 sq. ft. = \$320,000 labor + \$800,000 processing = \$1,120,000

Of course, all of these numbers are subjective. There are many different ways to spend money on amendments, labor and processing. The point of this outline is to educate on the cost of cannabis production. If the local government prices the permits too high then many of the county's farmers may easily be priced out of the industry. As the ordinance stands today, it is the belief of the HGA that the originally proposed permit fees are too high. It is our current recommendation that the fee be reduced from \$2.00 per square foot to \$1.00 per square foot. This new pricing is in line with the Mendocino County Ordinance. There is so much instability in the outdoor medical cannabis market that the higher permits prices may very well drive residents out of the area in search for a more stable future.

Humboldt County Outdoor Medical Cannabis Cultivation Ordinance
A Proposal
Presented to Humboldt County
By Humboldt Growers Association
October 1, 2010 First Draft
December 4, 2010 Second Draft

Intent

The intent of this document is to provide interested parties a starting point from which to formulate an ordinance regulating the cultivation of cannabis within Humboldt County that will be presented to the Humboldt County Board of Supervisors for approval.

This document is only an initial draft and input from relative parties, agencies, and government representatives are encouraged. Sections may be added to or deleted from. New sections may be required or entirely deleted.

Scope

(Please note the deletion of organic standards and light lumen restrictions from this section. There is further explanation on both of these topics later in this paper.)

These regulations shall outline the permitting process required by individuals and companies to cultivate medical cannabis within Humboldt County.

These regulations shall only apply to medical cannabis grow outdoors in an area larger than one hundred square feet.

Permit Process

- 1. Apply for permit and pay application fee.** *Application period is from November 1st thru April 1st. The application process will take 30-60 days with notification to be mailed within 10- 14 days of pre-site inspection. Applicant*

picks up application, fills it out and pays appropriate application fee – 101-400 sq. feet will be a \$1000 application fee and 401-20,000 square feet a will be a \$2500 application fee. Once the application fee has been received and the application has been reviewed a pre-site inspection will be scheduled with the applicant.

- 2. Pre-site inspection.** *These inspections are designed to verify that the applicant has sufficient water resources for permit application size. These **are not** law enforcement inspections and serve to protect the natural environment and verify the permit canopy size. Inspectors will also verify that the application size will be able to adhere to proper zoning setbacks and not be a public nuisance.*
- 3. Issuance or rejection of permit.** *Please refer to Permit Application Requirements section and Causes for Revocation sections.*
- 4. Pay permit fee.** *Upon approval of permit the applicant has 30 days to pay the permit fee in full.*
- 5. Permit applicant signs a permit affidavit.** *The permit applicant signs a permit affidavit. This is designed as a tool for the county to hold the applicant in accordance with all guidelines set forth by the ordinance. This also serves as an agreement between applicant and the county, which releases the county from all legal liability.*
- 6. Second site inspection.** *This is designed to confirm that the permit holder is adhering to the mature canopy size of the approved permit and verify there are no water use violations.*
- 7. Permit expires one year to the date of issuance.**
- 8. If permit conditions have changed than a new permit application is required.** *If upon second inspection the inspector notes that the permit holder is not in compliance with the mature canopy size there will be an amendment to their permit application with a penalty fee due for additional canopy area to be due within 30 days of noncompliance notification.*
- 9. If all permit conditions remain the same than the following years pre-sight inspection will not be required.** *The application fee shall be 50% of the original application fee and the permit fee will require payment in full.*

Required Permit Information

- 1. Full Name or Company Name.** *The county will need to know whom they are doing business with.*
- 2. Mailing address.** *Allows the county to know where to send corresponding mail.*
- 3. Age of permit applicant or company owners.** *All applicants must be 21 years of age or older.*
- 4. Residence of permit applicant or company owner.** *This is set up to find out if the applicant qualifies for a permit. All applicants must be a current resident for Humboldt County for at least the past two years.*

5. **Total maximum mature canopy area of cultivated cannabis can be up to and not exceed 20,000 square feet.** *This is in place to insure that the farmers of Humboldt County are practicing sustainable farming. This also minimizes Federal Government intervention under the current political climate. And increases the probability that the cannabis produced in the county will be of the highest quality for patients needs.*
6. **Location of cultivation assessors parcel #.** *The assessors parcel # allows the county to insure that individuals cultivating an area greater than 400 square feet and up to 20,000 square feet are doing so on a parcel of 5 acres or greater. It also insures that permit holders are not exceeding the 20,000 sq. ft. maximums.*
7. **California Id or Driver License #.** *This allows the county to verify the identity of applicant.*
8. **Signature of permit applicant.** *This is for a binding application.*
9. **Estimated water usage and source of water.** *This is so the county can quickly determine if the applicant qualifies on paper for the size of permit that they are requesting.*
10. **Notarized letter of consent if permit applicant is not the landowner.** **Letter shall contain the permit applicants name, AP#, and allowed area of cultivation.** *This is for the applicant whom is farming for an absentee landowner. The applicant must follow all requirements as set forth in the ordinance to qualify for a permit. It will also be the responsibility of the applicant to prove that he/she has been a resident of Humboldt County for at least two years.*
11. **Proof of land ownership.** *This is so that the county can verify that the applicant is the landowner. If not, the applicant must attach a notarized letter of consent from the landowner.*
12. **New permit or renewal.** *This will help to expedite the permit process, as renewed permits that have not added square footage will not require pre-site inspections.*
13. **Under prop 215 guidelines permit applicant must provide a Dispensary/Collective contract from an approved source.** *This is required to adhere to California state law. The applicant must show that they in compliance by providing the county with proof that they are in legal contract with a Dispensary/Collective with a patient base that qualifies the applicant for the permit size he/she is seeking. Currently in Humboldt County the policy is 100 square feet per medical patient. Therefore a 20,000 square foot permit would require a dispensary/collective contract to grow for 200 patients. (For further potential guidelines please refer to Mendocino's Outdoor Medical Cannabis Ordinance – see page 10 section (E))*

The permit applicant must conform to all of the following requirements to have a permit issued

1. **Must be at least 21 years of age** *In the wording for Prop 19 cannabis would have been regulated as an approved substance for those persons 21 years of*

- age and older. It is likely that future laws regulating the use of cannabis will include similar wording restricting the use, possession and/or cultivation of the substance to either 18 years of age and older or 21 years of age and older.*
- 2. Must be a resident of Humboldt County for at least 2 years.** *There has been a great deal of concern in the community regarding the corporatization of the cannabis industry. This 2-year residency clause is intended to benefit the long time residents of county by reducing the ability for outside investment opportunities. This will help to keep local money local.*
 - 3. Must not have been convicted of a violent crime.** *This will help to increase public safety.*
 - 4. If the permit applicant is not the land owner then the landowner must give written consent via notarized letter stating AP#, permit applicant name, time of land ownership and proof permit applicant is a 2 year county resident.** *There are many longtime residents in Humboldt County whom rent their homesteads. This will allow those parties to continue to cultivate medical cannabis while continuing to care for the land they rent.*
 - 5. All separate land parcels shall have separate permits.** *This insures that there will be ample application fees available to cover the expense of the required pre-site inspections, which will be required for each separate parcel even if the applicant has numerous parcels he/she would like permits for.*
 - 6. If a permit applicant is issued more than one permit the sum of the permitted maximum mature canopy area of all permits shall not exceed 20,000 square feet. .** *This clause is designed to insure that no one entity with in the county has the ability to hold more than 20,000 square feet of permitted cultivation space.*
 - 7. No permit shall be issued for more than 20,000 square feet** *This is included in the ordinance to reduce the potential for environmental degradation. Also, the reduced maximum permit size will reduce temptation by the Federal Government to become involved in the counties ability to regulate the medical cannabis industry.*
 - 8. All permit holders shall comply with all current and future zoning and land use codes.** *This can potentially allow the county to monitor the potential environmental impacts of outdoor medical cannabis.*
 - 9. Permit holder agrees that no water will be utilized that has been or is illegally diverted from any stream, creek or river.** *If water is to be with drawn from a stream, creek or river the permit holder shall provide the water use permit issued from California Divisions of Water Rights.*
 - 10. Permit applicant/holder shall provide access to all cultivation sites and water resources for the purpose of inspection at any time during normal business hours for the duration of valid permit.** *This is to insure access for inspections throughout the growing season. It also allows for the verification of water resources and water storage.*

Permit Fees

(Please refer to the opening statements of this paper and the section titled Estimated Cost to Set Up and Maintain Cultivation Sites for greater explanation on the reduction of permit prices.)

Application Fee - \$2500 (nonrefundable)

For greater than 400 square feet

\$1000 (nonrefundable) for less than 101-400 square feet

Permit Fees - \$400 per 400 sq. ft. increments up to 20,000 square feet

No fee for less than 100 square feet

\$400 for 101-400 square feet

\$400 for each additional 400 square feet up to \$20,000 for 20,000 square feet

Causes for Revocation of Permit

(In the original draft of this section there were two additional provisions. The first required farmers to utilize organic farming practices only. The second provision stated that permit revocation could be implemented if the cultivation methods degrade the surrounding natural resources. While it is the intention of the HGA to promote a sustainable future in outdoor medical cannabis there is concern that these two provisions will be virtually impossible for the county to enforce.)

- 1. Total area of cultivated medical cannabis canopy exceeds the maximum allowed by the current valid permit.** *If more than the permitted square footage of mature canopy is being cultivated the county will have to decide whether to let the farmer pay for the excess square footage or pull the permit. The maximum canopy size permitted shall be 20,000 sq ft. If more than the maximum permit size is planted the remaining plants should be destroyed and/or the permit revoked.*
- 2. Permit holder is convicted of a violent felony.** *If the permit holder is convicted of a violent felony as defined in California Penal Code Section 667.5 then there shall be cause for revocation of current permit. If during the application process it is discovered that the applicant has been convicted of or is on parole or probation for a violent crime as defined in California Penal Code Section 667.5 then the applicant will not be eligible for the a permit for the cultivation of medical cannabis. A conviction within the meaning of this Section is defined as a plea bargain, a guilty verdict, or a conviction following a plea of nolo contendere.*
- 3. Cultivation method shall not create a public nuisance.** *Any violation of the requirements for application would be considered a public nuisance.*
- 4. Permit is not clearly visible at the site of cultivation.** *Permit holder must display copies of his/her valid cultivation permit 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, and/or stored.*

5. Artificial lighting is used outdoors greater than 600 watts per 100 sq ft
All lights used for the outdoor 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. The permit holder is also expected to abide by all applicable codes in relation to the generation of power, should they be at a non-grid location.

Who does what?

Permit issuance? Sherriff dept.

Background check? Sherriff dept.

All pre-site and secondary inspections to be done by independent inspectors – C3, etc.

Zoning – Planning Dept.

Land use – Planning Dept.

The Humboldt Growers Association thanks you for supporting Humboldt County.