

ORDINANCE NO. SCC 2011-05

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
ENACTING SECTION 17.88.320, MEDICAL MARIJUANA CULTIVATION,
OF CHAPTER 17.88, SPECIAL USES,
OF THE SHASTA COUNTY CODE**

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

SECTION I.

Section 17.88.320 is added to the Shasta County Code as follows:

17.88.320 Medical Marijuana Cultivation

A. Legislative Findings.

The Board of Supervisors finds as follows:

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act").
2. The intent of the Compassionate Use Act was to enable persons who are in need of Marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes.
3. On January 1, 2004, Senate Bill 420, codified as Health and Safety Code sections 11362.7 *et seq.* and entitled "The Medical Marijuana Program Act," and as subsequently amended, became effective to clarify the scope of the Compassionate Use Act.
4. The County of Shasta has adopted a Zoning Plan identified as Title 17 (Zoning) of the Shasta County Code.
5. Prior to the enactment of this Section, there were no regulations specifically addressing Cultivation of Medical Marijuana in the Zoning Plan.
6. The County's unique geographic and climate 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. Marijuana growers can achieve a high per-plant yield with high economic value because of the County's favorable growing conditions.

7. Shasta County and other public entities have reported adverse impacts from Medical Marijuana Cultivation, including, but not limited to, disagreeable odors, unsanitary conditions, negative effects on physical, mental, and community health, violation of building codes, increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
8. The creation of persistent strong odors as Marijuana plants mature and flower is offensive to many people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable Marijuana plants and creating an increased risk of crime.
9. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, churches, and other similar locations.
10. The indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.
11. The County of Shasta may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
12. Preemption of the County of Shasta's authority will not be implied when the legislative scheme of the law, including the Medical Marijuana Program Act and the Compassionate Use Act, either permits or recognizes local regulation.
13. The Medical Marijuana Program Act, at Health & Safety Code section 11362.768, authorizes the County of Shasta to adopt an ordinance restricting the location and establishment of Medical Marijuana cooperatives, collectives, dispensaries, operators, establishments, and providers.
14. The Medical Marijuana Program Act, at Health and Safety Code section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with the Medical Marijuana Program Act.

15. Effective January 1, 2012, AB 1300, amending Health & Safety Code section 11362.83, additionally authorizes the County of Shasta to adopt an ordinance regulating the location, operation, and establishment of Medical Marijuana cooperatives and collectives.

B. Intent.

1. The Shasta County Board of Supervisors hereby intends to regulate the Cultivation of Medical Marijuana including without limitation, regulations as to location of Cultivation, size of area used for Cultivation, and the use of fencing and other screening and security structures, to accommodate the needs of Qualified Patients and their Primary Caregivers, and in furtherance of the public necessity, health, safety, convenience, and general welfare. Nothing in this Section shall be construed to authorize any use, possession, Cultivation, or distribution of Marijuana for non-medical purposes.
2. This Section is established to regulate Medical Marijuana Cultivation in a manner that mitigates potential impacts on surrounding properties and persons, and that is in conformance with the provisions of California Health and Safety Code sections 11362.5 through 11362.83.

C. Definitions.

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

1. **“Child Care Center”** means any licensed child care center, day care center as defined in Shasta County Code section 17.02.165, large day care home as defined in Shasta County Code section 17.02.170, small day care home as defined in Shasta County Code section 17.02.175, childcare home, or any preschool.
2. **“Church”** is defined in Shasta County Code section 17.02.145.
3. **“Cultivation”** or **“Cultivate”** means the planting, growing, harvesting, drying, processing, or storage of one or more Marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
4. **“Enforcing Officer”** is defined in Shasta County Code section 17.94.060(C)(1).

5. **“Fence”** is defined in Shasta County Code section 17.02.222 and is further defined as a wall or a barrier connected by boards, masonry, rails, panels, or any other materials approved by the Planning Director for the purpose of enclosing space or separating Parcels of land. For purposes of this Section the term “Fence” does not include retaining walls, tarpaulins, or scrap material.
6. **“Indoor” or “Indoors”** means within a fully enclosed and secure structure that complies with Title 16 (Buildings and Construction) of the Shasta County Code that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” × 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. For purposes of this Section, Cultivation within a detached structure accessory to a Residence shall be considered Indoor Cultivation if the structure satisfies the requirements of this definition. Otherwise, it shall be considered Outdoor Cultivation.
7. **“Legal Parcel”** means any Parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).
8. **“Marijuana”** shall have the same meaning as that set forth in Health and Safety Code section 11018, as may be amended. Marijuana, Medical Marijuana, and the Cultivation thereof, as defined in this Section and in Section 17.88.310 of the Shasta County Code, shall not be considered Agriculture or Agricultural Processing as defined in Sections 17.02.055 and 17.02.057, respectively, of the Shasta County Code.
9. **“Medical Marijuana”** shall mean Marijuana recommended by a licensed physician, in accordance with California Health and Safety Code section 11362.5 through section 11362.83, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.
10. **“Medical Marijuana Collective”** means Qualified Patients and/or the designated Primary Caregivers of Qualified Patients, who associate, or form a cooperative in accordance with Section 12300 of the Corporations Code, within the unincorporated area of the County in order to collectively or cooperatively cultivate Marijuana for medical purposes, as provided in

Health and Safety Code Section 11362.775. The term collective shall include “cooperative” unless the context clearly indicates otherwise.

11. **“Outdoor”** or **“Outdoors”** means any location that is not **“Indoor”** as defined herein.
12. **“Parcel”** means a **“Legal Parcel”** as defined herein.
13. **“Premises”** means a single, Legal Parcel of property. Where contiguous Legal Parcels are under common ownership or control, such contiguous Legal Parcels shall be counted as a single Premises for purposes of this Section.
14. **“Primary Caregiver”** shall have the same definition as Health and Safety Code Section 11362.7(d), as may be amended.
15. **“Public Library”** means a public facility in which literary, musical, artistic, or reference materials are kept for reading, reference or lending.
16. **“Public Park”** means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.
17. **“Qualified Patient”** shall have the same definition as Health and Safety Code Sections 11362.7(c) and (f), as may be amended.
18. **“Residence”** shall mean a fully enclosed structure used for human occupancy and shall have the same meaning as **“domicile.”**
19. **“School”** is defined at Shasta County Code section 17.02.500.
20. **“School Bus Stop”** means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive School buses, as defined in California Vehicle Code section 233, or School pupil activity buses, as defined in Vehicle Code section 546.
21. **“School Evacuation Site”** means any location designated by formal action of the governing body, superintendent, or principal of any School as a location to which juveniles are to be evacuated, or are to assemble, in the event of an emergency or other incident at the School.
22. **“Sheriff”** or **“Sheriff's Office”** means the Shasta County Sheriff's Office or the authorized representatives thereof.

23. **“Youth-oriented Facility”** means elementary School, middle School, high School, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate, or assemble at the establishment are predominantly minors. This shall not include a Child Care Center.

D. Nuisance Declared; Cultivation Restrictions.

1. The Cultivation of Marijuana plants, either Indoors, Outdoors, or combined on any Parcel or Premises within an area greater than as provided herein, or in any other way not in conformance with the provisions of this Section is hereby declared to be a public nuisance that may be abated in accordance with Chapter 8.28 (Nuisances) of the Shasta County Code, Shasta County Code section 17.94.060, and by any other means available by law. The provisions of Chapter 17.90 (Nonconforming Uses) of the Shasta County Code shall not apply to the Cultivation of Marijuana plants hereby declared to be a public nuisance.
2. Medical Marijuana Cultivation is prohibited on any Parcel or Premises within the unincorporated territory of Shasta County except as an accessory use to a legally established residence on a Legal Parcel.
3. Except as provided in subsection 17.88.320(D)(4) of the Shasta County Code, Medical Marijuana Cultivation may be undertaken only by a qualified patient who occupies a legal residence on a Legal Parcel or Premises proposed for Cultivation as his or her primary place of residence.
4. A primary caregiver, as defined, may cultivate Medical Marijuana on behalf of his/her qualified patient(s), but only at the qualified patient's primary residence and/or at the primary caregiver's primary residence, and only in conformance with all applicable State and local regulations and all limitations set forth in this Section.
5. Cultivation within a Residence or any other structure lawfully used or intended for human occupancy is prohibited. Indoor Cultivation may only occur within a detached structure that meets the definition of Indoor, and that is accessory to and located on the same Premises as the Residence. Cultivation within any detached accessory structure that does not meet the definition of Indoor shall be considered Outdoor Cultivation.
6. The following limitations apply to each Premises in any combination of indoor and/or outdoor cultivation regardless of the number of qualified

patients or Primary Caregivers residing in the legal residence, or participating individually, collectively, or cooperatively in the Medical Marijuana Cultivation activity.

- a. Premises with a gross area of less than one acre shall be limited to 60 square feet of total Cultivation area.
 - b. Premises with a gross area of at least one acre but less than two acres shall be limited to 100 square feet of total Cultivation area.
 - c. Premises with a gross area of at least two acres but less than five acres shall be limited to 150 square feet of total Cultivation area.
 - d. Premises with a gross area of at least five acres but less than 20 acres shall be limited to 240 square feet of total Cultivation area.
 - e. Premises with a gross area of 20 acres or more shall be limited to 360 square feet of total Cultivation area.
7. The following setbacks shall apply to all Outdoor Cultivation areas and shall be measured in a straight line from the Fence/enclosure required by subsection (D)(9) of this Section to the nearest property line and/or the nearest exterior wall of the nearest residence on a separate Legal Parcel as applicable.
- a. Fifteen (15) feet on Parcels less than one acre gross area provided that the Cultivation area shall be located in the backyard only and no less than thirty (30) feet from any residence on a separate Legal Parcel.
 - b. Fifty (50) feet on Parcels of at least one acre but less than two acres provided the Cultivation area shall be located in the backyard only and no less than seventy-five (75) feet from any residence on a separate Legal Parcel.
 - c. One hundred (100) feet on Parcels of at least two acres but less than five acres
 - d. One hundred fifty (150) feet on Parcels of at least five acres but less than 20 acres.
 - e. Two hundred (200) feet on Parcels of 20 acres or more.

8. Cultivation of Marijuana is prohibited on any Parcel or Premises located within the following areas:
 - a. Within 1,000 feet of a School, School Bus Stop, School Evacuation Site, Child Care Center, Public Park, Public Library, Church, or Youth-oriented Facility.
 - b. Closer to any property line of the Parcel upon which the Cultivation would occur or any Residence located on a separate Legal Parcel, than as specified in subsection (D)(7) of this Section.
 - c. In any location where the Marijuana would be visible from the public right-of-way or publicly traveled private roads at any stage of their growth.
 - d. Distance in subsection D(8)(a) of this Section shall be measured in a straight line from either (1) the Fence/enclosure surrounding the Cultivation area as required in subsection D(9) of this Section or (2) the nearest exterior wall of the Indoor cultivation structure as applicable, to the nearest property line of the nearest School, Child Care Center, Public Park, Public Library, Church, or Youth-oriented Facility.
9. All Marijuana cultivated Outdoors must be fully enclosed by a solid, sight obscuring Fence of a height sufficient to conceal the Marijuana from public view at all stages of growth. Should the Marijuana plant(s) grow higher than the Fence, either the plants shall be cut so as to not extend higher than such Fence, or the responsible party shall install a Fence in compliance with Section 17.84.030 of the Shasta County Code, sufficient to conceal the Marijuana plants from public view. The Fence must be adequately secure to prevent unauthorized entry and include a locking gate that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area. Bushes or hedgerows shall not constitute an adequate Fence under this Section.
10. There shall be no exterior evidence of Indoor or Outdoor Cultivation from a public right-of-way or publicly traveled private road.
11. Marijuana Cultivation shall not adversely affect the health, safety, or general welfare of persons at the Cultivation site or at any nearby residence by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of hazardous materials, processes, products or wastes, or by any other way.

12. Grow light systems associated with Indoor Cultivation shall be shielded to confine light and glare to the interior of the structure and shall conform to all applicable building and electrical codes. Grow light systems shall not be allowed for Outdoor Cultivation.
13. No person owning, leasing, occupying, or having charge or possession of any Parcel or Premises within the County shall cause, allow, suffer, or permit such Premises to be used for the Outdoor or Indoor Cultivation of Medical Marijuana in violation of the Health and Safety Code or this Section.

E. Enforcement.

Marijuana Cultivation shall be subject to Chapter 8.28 (Nuisances) of the Shasta County Code and Shasta County Code Chapter 17.94. Furthermore, in the performance of his or her functions, the Enforcing Officer is authorized to request and inspect any evidence that serves to confirm compliance with any or all provisions of this Section including, but not limited to the following: (1) original documents or other evidence establishing the Qualified Patient or Primary Caregiver status of the person or persons involved in the Cultivation; (2) the legal Residence of the person or persons involved in the Cultivation; (3) verification of the place of residence for all Qualified Patients for whom a Primary Caregiver is cultivating, pursuant to Health and Safety Code section 11362.7(d).

F. Non-exclusive remedy.

This Section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

G. Liability.

The provisions of this Section shall not be construed to protect Qualified Patients, Primary Caregivers, or any other person from prosecution pursuant to any laws that may prohibit the Cultivation, sale, distribution, possession and/or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Moreover, Cultivation, sale, possession, distribution, and use of Marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. Qualified Patients, Primary Caregivers, and any other persons assume any and all risk and any and all liability that may arise or result under state and federal laws from the Cultivation, sale, possession, distribution, and/or use of Medical Marijuana. Further, to the fullest extent permitted by law, any actions taken under the

provisions of this Section by any public officer or employee of the County of Shasta or Shasta County itself, shall not become a personal liability of such person or a liability of the county.

SECTION II.

Section 17.94.060(C)(1) of the Shasta County Code is amended in its entirety to read as follows:

The Planning Director (or designee) is the enforcing officer for the provisions of this title. The Shasta County Sheriff (or designee) may also serve concurrently as an enforcing officer for the provisions of this title with the approval of the Shasta County Sheriff and the Planning Director. Nothing in this provision shall be construed to limit the authority provided to the Shasta County Sheriff by state or federal law.

SECTION III.

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

SECTION IV.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION V.

All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby repealed. The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the

validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

SECTION VI.

This ordinance shall take effect and be in full force and effect 30 days after its passage. The Clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 13th day of December, 2011 by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Kehoe, Moty, and Hawes
NOES: Supervisors Hartman and Baugh
ABSENT: None
ABSTAIN: None
RECUSE: None



LES BAUGH, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: Jayne Acotta
Deputy

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST DEC 14 2011

CLERK OF THE BOARD
Supervisor of the County of Shasta, State of California
BY: Jayne Acotta