

**ORDINANCE NO. SCC 2019-04**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SHASTA  
REGULATING CANNABIS CULTIVATION**

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

**SECTION I.**

Section 17.88.320 of the Shasta County Code is amended in its entirety to read as follows:

**17.88.320 CANNABIS 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" or CUA).
2. The intent of the Compassionate Use Act was to enable seriously ill Californians to obtain marijuana for appropriate medical purposes and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes. The Compassionate Use 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." The ballot arguments supporting the Compassionate Use Act expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
3. On January 1, 2004, Senate Bill 420, codified as Health and Safety Code Section 11362.7 et seq. and entitled "The Medical Marijuana Program (MMP) Act," and as subsequently amended, became effective to clarify the scope of the Compassionate Use Act, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.
4. The Medical Marijuana Program Act, at Health and Safety Code Section 11362.768, authorizes the County of Shasta to adopt an ordinance restricting the location and the establishment of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, and providers.
5. 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, and additionally authorizes the County of Shasta to adopt an ordinance regulating the location, operation, and establishment of medical marijuana cooperatives and collectives.

6. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants... anyone... an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..."
7. On November 8, 2016, the California electorate approved Proposition 64, known as the "Adult Use of Marijuana Act" or "AUMA." The AUMA's purpose is to establish a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.
8. On June 27, 2017, the California Legislature adopted the "Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA)." The MAUCRSA, among other things, revised references to "marijuana" or "medical cannabis" in existing law to instead refer to "cannabis" or "medicinal cannabis."
9. The AUMA, as amended by the MAUCRSA, at Health & Safety Code § 11362.1(a)(3) provides, in pertinent part, that it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants. These activities shall collectively be referred to as "Personal Cultivation Under Health & Safety Code § 11362.1(a)(3)."
10. The AUMA, as amended by the MAUCRSA, at Health & Safety Code § 11362.2(a) provides that "Personal cultivation of cannabis under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:
  - (1) A person shall plant, cultivate, harvest, dry or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b)(1).
  - (2) The living plants and any cannabis produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.
  - (3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time."
11. The AUMA, as amended by the MAUCRSA, at Health & Safety Code § 11362.2(b)(1) further provides that a city, county, or city and county may enact and enforce reasonable regulations to regulate Personal Cultivation Under Health & Safety Code § 11362.1(a)(3).

12. The AUMA, as amended by the MAUCRSA, at Health & Safety Code § 11362.2(b)(2), provides that no county may completely prohibit persons from engaging in Personal Cultivation Under Health & Safety Code § 11362.1(a)(3) inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
13. The AUMA, as amended by the MAUCRSA, at Health & Safety Code §§ 11362.2(b)(3) & (4), provides that a county may completely prohibit persons from engaging in Personal Cultivation Under Health & Safety Code § 11362.1(a)(3) outdoors upon the grounds of a private residence until such time as the California Attorney General determines that nonmedical use of cannabis is lawful in the State of California under federal law.
14. 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.
15. Preemption of the County of Shasta's authority will not be implied when the legislative scheme of the law, including but not limited to, the Medical Cannabis Program Act and the Compassionate Use Act, the AUMA, and the MAUCRSA, either permits or recognizes local regulation.
16. The County of Shasta has adopted a zoning plan identified as Title 17 (Zoning) of the Shasta County Code.
17. 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 cannabis cultivation. Cultivation has occurred in the rural and also in more residential and town center areas of unincorporated portions of the county. Cannabis growers can achieve a high per-plant yield with high economic value because of the county's favorable growing conditions.
18. Shasta County and other public entities have reported adverse impacts from cannabis cultivation, including, but not limited to, disagreeable odors, negative effects on the environment, 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.
19. The creation of persistent strong odors as cannabis 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 cannabis plants and creating an increased risk of crime.
20. Children are particularly vulnerable to the effects of cannabis use, and the presence of cannabis plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children, including schools, parks, churches, and other similar locations. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that children will be involved or endangered.

21. The indoor cultivation of substantial amounts of cannabis within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, 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.
22. Comprehensive restrictions for cannabis cultivation are proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of cannabis cultivated is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place.
23. The risks and adverse impacts of cannabis cultivation, as stated herein, are applicable regardless of whether the cannabis cultivation is for medical or nonmedical purposes. The provisions contained in this section are intended to simplify the cannabis cultivation regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with cannabis cultivation as stated herein, while considering the desires of qualified patients and their primary caregivers, and considering the provisions in the AUMA relating to Personal Cultivation Under Health & Safety Code § 11362.1(a)(3).

**B. Intent.**

1. The Shasta County Board of Supervisors hereby intends to regulate the cultivation of cannabis for both medical and nonmedical purposes, including without limitation, regulations as to location of cultivation, the number of cannabis plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with cannabis cultivation as stated herein, while considering the desires of qualified patients and their primary caregivers, and considering the provisions in the AUMA relating to Personal Cultivation Under Health & Safety Code § 11362.1(a)(3), 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 cannabis that is in violation of state or federal law.
2. This section is established to regulate cannabis cultivation in a manner that mitigates potential impacts on properties and persons, and that is in conformance with all relevant provisions of law.
3. All references to statutes and ordinances in this section refer to statutes and ordinances as they currently exist and as they may be amended.

**C. Definitions.**

Except where the context otherwise requires, the following definitions shall govern the construction of this section. References to terms and definitions in the Shasta County Code refer to those terms and definitions as they currently exist and as they may be amended:

1. "Cannabis" shall have the same meaning as that set forth in Health and Safety Code Section 11018. Cannabis, and the cultivation thereof, as defined in this section and in other sections 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.
2. "Cannabis plant" means any mature or immature cannabis plant, or any cannabis seedling.
  3. "Child care center" means any licensed child care center, "day care center" as defined in Shasta County Code Section 17.02.165 or as defined in Health & Safety Code Section 1596.76, "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.
  4. "Church" is defined in Shasta County Code Section 17.02.145.
  5. "Cultivation" or "cultivate" means any activity involving the planting, growing, harvesting, drying, processing, curing, grading or trimming of one or more cannabis plants or any part thereof.
  6. "Dwelling unit" is defined in Shasta County Code Section 17.02.205.
  7. "Enforcing officer" is defined in Shasta County Code Section 17.94.060(C)(1).
  8. "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 other materials approved by the director of resource management for the purpose of enclosing space or separating parcels of real property. For purposes of this section, the term "fence" does not include retaining walls, tarpaulins, bamboo, or similar screening or scrap material.
  9. "Indoor" or "indoors" means within a "residence" or a "residential accessory building" as defined herein.
  10. "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) or is otherwise established by law.
  11. "Medical cannabis" or cannabis "for medical purposes" shall mean cannabis 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.
  12. "Outdoor" or "outdoors" means any location that is not in a "residence" or in a "residential accessory building" as defined herein.
  13. "Parcel" means a "legal parcel" as defined herein.
  14. "Primary caregiver" shall have the same definition as Health and Safety Code Section 11362.7(d).
  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 Section 11362.7(c) and (f).
18. "Residence" shall mean a fully enclosed structure, legally established with all required permits approved, used for human occupancy, and shall have the same meaning as "one-family residence," "two-family residence," "multifamily residence," "accessory dwelling," "family care residence," "employee housing," "boarding house," "supportive housing," "transitional housing," "mobile home," "manufactured home," "multifamily manufactured home," "group foster home," "residential care facility," and "residential facility for the elderly" as defined in Shasta County Code Sections 17.02.450, 17.02.460, 17.02.445, 17.02.192, 17.02.442, 17.02.212, 17.02.090, 17.02.591, 17.02.603, 17.02.365, 17.02.355, 17.02.377, 17.02.240, 17.02.465, and 17.02.470, respectively.
19. "Residential accessory building" is defined in Shasta County Code Section 17.02.125.
20. "School" is defined in Shasta County Code Section 17.02.500.
21. "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 545, or school pupil activity buses, as defined in Vehicle Code Section 546.
22. "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.
23. "Sheriff" or "sheriff's office" means the Shasta County Sheriff's Office or the authorized representatives thereof.
24. "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. A "youth-oriented facility" shall also mean a "youth center" as defined in Health & Safety Code Section 11353.1.

**D. Nuisance Declared; Cultivation Restrictions.**

1. Regardless of whether the cannabis is for medical purposes or nonmedical purposes, the cultivation of cannabis plants on any parcel 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 cannabis plants hereby declared to be a public nuisance.
2. Outdoor cultivation on any parcel is prohibited.
3. Cultivation may only occur on a parcel within (1) a residence, or (2) a detached residential accessory building associated with a residence that is affixed to the real property that complies with all of the provisions of the Shasta County Code relating to accessory

structures, including, but not limited to, the county's general development standards in Chapter 17.84, and Section 17.88.140 of the Shasta County Code. Where the provisions of this section are more restrictive than Shasta County Code Chapter 17.84 and Section 17.88.140, the provisions of this section shall govern.

4. Cultivation within a residence or a residential accessory building associated with a residence shall meet all of the following criteria:
  - a. The building and interior space shall be legally constructed with all applicable permits and provided with proper ingress and egress, including, but not limited to, structural, electrical, mechanical, and plumbing approved by the applicable authorities prior to any cultivation activity. The conversion of any existing space for cultivation shall be subject to all applicable permit requirements and inspection.
  - b. Hardwired or battery powered smoke and carbon monoxide detectors, or a combination smoke and carbon monoxide detector, shall be located directly outside and within three (3) feet of any space used for cultivation.
  - c. The use of open flame, butane or other flammable gases for cultivation is prohibited.
  - d. The storage or use of chemicals or materials not specifically recommended by the manufacturer for indoor use is prohibited.
  - e. The cultivation space shall be equipped with odor control filtration and ventilation system(s) adequate to prevent a humidity or mold problem.
  - f. The cannabis lighting system shall not exceed a total of one thousand two hundred (1,200) watts or the conductor size of the electrical system or wiring.
  - g. Any automated watering system shall include a secondary containment system.
  - h. All lighting, ventilation and other equipment shall be UL listed, tested, and approved for the intended use and shall conform to all applicable building, mechanical, and electrical codes.
  - i. The cultivation space shall include adequate coverings on windows to confine light and glare to the interior of the structure.
  - j. Any residential accessory building where cultivation is permitted shall have locking doors and a working security system which shall consist of a standard audible residential alarm of at least ninety (90) dBA, but not exceeding one hundred ten (110) dBA. This provision shall not apply to cultivation within a residence.
5. No more than six cannabis plants shall be permitted to be cultivated within a dwelling unit of a residence. Cultivation is permitted within a dwelling unit of a residence and within a residential accessory building associated with that dwelling unit of a residence, but in no case shall the combined number of cannabis plants cultivated within a dwelling unit of a residence and within a residential accessory building associated with that dwelling unit of a residence exceed six. The foregoing limitations shall be imposed regardless of the number of qualified patients or primary caregivers or other persons residing within a dwelling unit of a residence or participating directly or indirectly in the

cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating cannabis are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating cannabis.

6. Cultivation of cannabis shall not occur in a location where the cannabis would be visible or detectable from a school, school bus stop, school evacuation site, child care center, public park, public library, church, youth-oriented facility, or any public right-of-way or publicly traveled private roads at any stage of their growth.
7. All persons and entities engaging in the cultivation of cannabis shall:
  - a. Have a legal water source on the parcel;
  - b. Not engage in unlawful or unpermitted surface drawing of water for such cultivation; and
  - c. Not permit illegal discharges of water from the parcel.
8. Cannabis cultivation shall not adversely affect the environment or the public health, safety, or general welfare by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of plant or animal poisons, or hazardous materials, processes, products or wastes, or by any other way.
9. No person owning, leasing, occupying, or having charge or possession of any parcel within the county shall cause, allow, suffer, or permit such parcel to be used for the cultivation of cannabis in violation of the Shasta County Code.
10. Unless the person(s) cultivating cannabis on any parcel is/are the sole legal owner(s) of the parcel, such person(s) shall obtain a notarized letter(s) from all of the legal owner(s) indicating that all of the legal owner(s):
  - a. Has/have reviewed and understand(s) Section 17.88.320 of the Shasta County Code related to cannabis cultivation; and
  - b. Consent(s) to the cultivation of cannabis on the parcel.

A copy of the notarized letter(s) must be kept available on the parcel where the cultivation is located. The enforcing officer may prescribe forms for such letters. Cultivation in the absence of such notarized written consent is prohibited.

11. Cultivation shall be subject to the following permitting requirements:
  - a. Cultivation shall only occur after the issuance of a zoning permit, in accordance with Shasta County Code Section 17.92.060. Cultivation without a valid zoning permit is prohibited.
  - b. The term of any zoning permit issued for cultivation pursuant to this subsection shall be two (2) years. The permit may be extended for two (2) additional two-year terms (for a total of six (6) years) provided that for each extension an application shall be made prior to expiration of the permit, which application shall include:
    - i. Payment of an extension and/or special inspection fee as set by the Board of Supervisors; and

- ii. Verification that the cultivation is in full compliance with all applicable standards and regulations. The cultivation shall cease at the end of the term or any applicable extension term, but a new zoning permit may be granted in accordance with Shasta County Code Section 17.92.060 and this section.

**E. Enforcement.**

Cannabis 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 enter upon and inspect private properties to ensure compliance with the provisions of this Section 17.88.320 of the Shasta County Code. Any such entry and inspection remains subject to all requirements established by the United States Constitution, the California Constitution, and any other applicable state and federal law.

**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 or to enforce the provisions of the Shasta County Code.

**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 cannabis 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 authorize conduct or acts that violate federal law, does not serve in any manner as an obstacle to enforcement of federal law, 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 cannabis. 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.

**H. Misdemeanor Penalty.**

As authorized by Government Code Section 25132, and except as otherwise provided by state statute, any person or entity violating any provision of this Section 17.88.320 of the Shasta County Code shall be guilty of a misdemeanor.

**SECTION II.**

The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 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), 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including, but not limited to, by direct referral to the County Counsel as appropriate for judicial enforcement), and 15303 (new construction or conversion of small structures, e.g., a residential accessory building). There are no unusual circumstances under CEQA Guidelines Section 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

The County further finds that this ordinance is consistent with the County General Plan on the basis that the ordinance discourages excess grading and safeguards against disturbance and development on unstable slopes (General Plan Sections 5.1, 6.1), protects against degradation and misappropriation of water resources (General Plan Sections 5.1, 6.6), reduces exposure of the general public to hazardous materials (General Plan Section 5.6), protects agricultural, timber, recreation and other resource lands for their intended lawful purposes including habitat and production of food and fiber, guards against encroachment of large scale or illegal outdoor cultivation onto these lands (General Plan Sections 6.1 through 6.10), and is in furtherance of the public necessity, health, safety, convenience, and general welfare.

### **SECTION III.**

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 IV.**

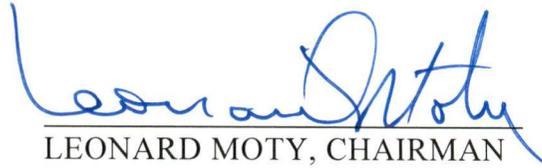
The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

### **SECTION V.**

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 18th day of June, 2019, by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Baugh, Chimenti, Moty, and Rickert  
NOES: Supervisor Morgan  
ABSENT: None  
ABSTAIN: None  
RECUSE: None



LEONARD MOTY, CHAIRMAN  
Board of Supervisors  
County of Shasta  
State of California

ATTEST:  
LAWRENCE G. LEES  
Clerk of the Board of Supervisors

By: \_\_\_\_\_



Deputy