Subject: Amendments to Chapters 34A and 34C of the Butte County Code

Department: County Counsel

Meeting Date Requested: October 10, 2017

Contact: Bruce Alpert Phone: 530.538.7621

Regular Agenda □ Consent Agenda ☑

Department Summary: (Information provided in this section will be included on the agenda. Attach explanatory memorandum and other background information as necessary).

In accordance with Proposition 64 and subsequent legislation, beginning in January of 2018 the state will begin issuing licenses to individuals and businesses seeking to engage in various commercial marijuana activities, such as cultivation, distribution, manufacturing, testing, and retail sales and deliveries, unless the local jurisdiction where the individual or business is located has adopted an ordinance that prohibits the proposed commercial activity. At a workshop held before the Board of Supervisors on August 8, 2017, the Board directed staff to amend both Chapter 34A of the Butte County Code, which regulates medical marijuana, and Chapter 34C, which regulates non-medical marijuana, to prohibit all commercial activities, with the exception of mobile deliveries, which are currently allowed in Butte County.

The proposed amendments will revise the County’s current ordinances regulating medical and non-medical marijuana as follows: 1) Add findings to the Findings and Purposes sections to summarize the recent changes to state law; 2) Add definitions to the Definitions sections to define the commercial activities that the state will begin licensing in 2018; and 3) Add provisions that expressly prohibit all commercial activities, with the exception of mobile deliveries, so long as the delivery originates from a licensed retailer located outside of Butte County.

Fiscal Impact:
Does not apply

Personnel Impact:
Does not apply

Action Requested:
Waive first reading of the ordinances.

Administrative Office Review: Casey Hatcher, Economic and Community Development Manager
CHAPTER 34A OF THE BUTTE COUNTY CODE – BUTTE COUNTY MEDICAL
MARIJUANA CULTIVATION–ORDINANCE

34A-1 Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.83 and 11362.768(f), and Government Code section 25845, the Board of Supervisors does enact this Chapter, which shall be known and may be cited as the “Butte County Medical Marijuana Cultivation Ordinance.”

34A-2 Findings and Purpose.


(b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The Proposition 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 Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

(c) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et
seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.

(d) Health and Safety Code section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420.

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

(f) The County’s geographic 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 outdoor marijuana cultivation. Outdoor marijuana growers can achieve a high per-plant yield because of the County’s favorable growing conditions.
The federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of two hundred thirty six (236) grams, or about one-half (.5) pound, to eight hundred forty-six (846) grams, or nearly two (2) pounds. Based on Butte County Sheriff’s seizures, yields in Butte County have tended to be beyond this range with three (3) to four (4) pounds of dried “bud” per plant being common. The “street value” of a single cannabis plant is substantial. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can range between on thousand five hundred dollars ($1,500.00) to three thousand dollars ($3,000.00). A single marijuana plant cultivated within the County can thus easily yield four thousand dollars ($4,000.00) or more in salable marijuana.

(g) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Butte County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive
civil regulation of premises used for marijuana cultivation is
proper and necessary to avoid the risks of criminal activity,
degradation of the natural environment, malodorous smells, and
indoor electrical fire hazards that may result from unregulated
marijuana cultivation, and that are especially significant if the
amount of marijuana cultivated on a single premises is not
regulated and substantial amounts of marijuana are thereby allowed
to be concentrated in one (1) place.

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

(i) Public meetings regarding previous cultivation
ordinances were well-attended by hundreds of Butte County
residents. The majority of those present spoke out against the
adoption of the proposed ordinance, Ordinance 4029. However, many
residents who live on smaller parcels in more densely populated areas indicated that during the marijuana cultivation season, the overpowering unpleasant smell of marijuana resulted in their inability to use their yards and required them to keep windows and doors shut in the stifling summer heat. Residents stated that they could not invite friends to their home to visit, barbecue outdoors or even allow their children to play in the backyard. Other residents indicated that the use of a swamp cooler during the summer months would actually result in the stench of marijuana being sucked into the residence. Adults and children with respiratory problems were particularly affected. Residents reported that marijuana grown in residential backyards results in an invitation to criminal activity for persons who would steal marijuana plants out of backyards. Some marijuana growers would live in a tent in their backyard, carrying firearms and utilizing guard dogs to protect their marijuana plants. Residents reported they were uncomfortable allowing their children to play outside in their neighborhood due to such dangerous activity. Cultivators of medical marijuana stated that they would not grow medical marijuana at their own residence to protect their children. For this reason, the growth of medical marijuana on smaller parcels is especially dangerous to the community, particularly children.

(j) As recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of
marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. The Butte County District Attorney’s Office has indicated that there has been an increase in crime/felonies involving marijuana. The Butte County Sheriff’s Office has indicated that over 150 calls for service in the past year have involved marijuana, including assaults and an attempted homicide.

(k) It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Butte. This Chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, welfare and environment in Butte County.
(l) The limited right of qualified patients and their primary
caregivers under State law to cultivate marijuana plants for
medical purposes does not confer the right to create or maintain
a public nuisance. By adopting the regulations contained in this
Chapter, the County will achieve a significant reduction in the
aforementioned harms caused or threatened by the unregulated
cultivation of marijuana in the unincorporated area of Butte
County.

(m) The purpose of this Ordinance is to provide a structure
for a complaint-driven civil process to remedy nuisances related
to medical marijuana cultivation.

(n) The Board of Supervisors adopted Ordinance 4029 on May
24, 2011. A successful referendum campaign was conducted against
Ordinance 4029, which resulted in Ordinance 4029 being placed on
the ballot for the regular County election held on June 5, 2012.
At the election, Butte County voters failed to approve Ordinance
4029. By adopting this Chapter, the Board of Supervisors intends
to reach a compromise between the interests of qualified patients
who need access to medical marijuana and those who are adversely
affected by its cultivation.

(o) Nothing in this Chapter shall be construed to allow the
use of marijuana for non-medical purposes, or allow any activity
relating to the cultivation, distribution, or consumption of
marijuana that is otherwise illegal under State or federal law.
No provision of this Chapter shall be deemed a defense or immunity
to any action brought against any person by the Butte County
District Attorney, the Attorney General of State of California, or
the United States of America.

(p) County staff has reported discovering many marijuana
gardens without any person responsible for the property on site.
Issues arising from unattended marijuana gardens, such as illegal
camping associated with cultivation, abuse of experimental well
permits and interim or non-permitted sewage disposal systems have
been reported by County staff. Thirteen (13) lawsuits involving
illegal grading have been filed by the County and in each case
there is no legal residence on the property. The Board has
repeatedly made very clear that it is their expectation and
requirement that all cultivation activities be conducted with the
upmost care, attention, oversight, protection and management
possible. Requiring cultivation to take place in conjunction with
the patient/caregiver/co-op grower's residence, in all
circumstances, is a reasonable means by which to ensure cultivation
is being done in line with those expectations and legal
requirements throughout the growing season. Requiring cultivation
in conjunction with a residence also supports the fundamental
principle that cultivation in Butte County is to be done by, and
for, Butte County residents, and is not meant for temporary or
transient cultivation activities.

(q) The original enforcement provisions, which were limited
to nuisance abatement and relatively low civil penalties, are not
adequate deterrents to violation. After a certain point in the growing season, the current fine amounts are insufficient to properly incentivize compliance. If the ultimate value of non-compliance exceeds the value of compliance, the choice will generally be to continue non-compliance. Higher penalty amounts could result in a reassessment of that choice.

(r) The revised provisions contained in this Chapter are intended to address the aforementioned concerns, and more effectively control the harms caused by unregulated and noncompliant marijuana cultivation, while still accommodating the needs of medical patients and their caregivers to the greatest extent practicable.

(s) In 2015, the California Legislature enacted Senate Bill 643, along with Assembly Bills 243 and 266, which, among other things, established the Medical Marijuana Regulation and Safety Act (codified as California Business and Professions Code sections 19300 et seq.). Business and Professions Code section 19315(a) provides that “Nothing in this Chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(t) Following the passage of the Medical Marijuana Regulation and Safety Act, an increasing number of individuals and businesses began offering mobile delivery of marijuana to customers in the
unincorporated areas of Butte County, as evidenced by advertisements online and in local publications, such as the Chico News & Review.

(u) On November 8, 2016 Californians voted to legalize the non-medical use of marijuana via Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). AUMA creates a state regulatory and licensing system that governs the commercial cultivation, testing and distribution of non-medical marijuana, and the manufacturing of non-medical marijuana products. However, AUMA authorizes local jurisdictions to completely prohibit the establishment or operation of any non-medical marijuana business within its jurisdiction.

(v) On June 27, 2017 Governor Brown signed into law Senate Bill 94, which provides a single regulatory structure for commercial activities involving both medical and non-medical marijuana. The unified structure repeals the collective/cooperative model, and establishes a strict licensing scheme, whereby all commercial marijuana activities, including retail sales and deliveries, are required to be conducted by licensees.

(w) In January of 2018 the State of California will begin issuing licenses for commercial activities, including cultivation, nurseries, manufacturing, testing, and retail sales and deliveries. However, SB 94 allows local jurisdictions to adopt and enforce ordinances that either regulate those commercial
businesses to be licensed by the state, or completely prohibit the
establishment or operation of any or all commercial activities
within their local jurisdictions.

(x) It is also the purpose and intent of this Chapter to
regulate commercial activities involving medical marijuana in a
manner that is consistent with state law, and that promotes the
health, safety, and general welfare of the residents and businesses
located within the unincorporated areas of Butte County.

34A-3 Definitions.

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

(a) “Child Care Center” means any licensed child care center,
daycare center, or childcare home, or any preschool.

(b) “Church” means a structure or leased portion of a
structure, which is used primarily for religious worship and
related religious activities.

(c) “Code Enforcement Officer” means any person employed by
the County of Butte and appointed to the position of code
enforcement officer.

(d) “Commercial activity” means any enterprise or activity,
whether or not for profit, concerning the cultivation, production,
storage, processing, manufacture, dispensing, delivery,
distribution, laboratory testing, labeling, transportation,
provision, or sale of marijuana or marijuana products.

(ed) “Cultivation” means the planting and growing of one (1)
or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

(f) “Delivery” means the commercial transfer of marijuana or marijuana products to a customer 21 years of age or older.

(g) “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between licensed entities. Distribution does not include such transactions if done directly to an individual end-user.

(h) “Enforcing Officer” means the Code Enforcement Officer or his or her authorized deputies or designees, each of whom is independently authorized to enforce this Chapter.

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

(j) “Harvest” means the drying, processing, or storage of marijuana which may only occur in a fully enclosed and secure building.

(k) “Indoors” means within one (1) fully enclosed and secure detached structure that complies with the California Building Standards Code (Title 24 California Code of Regulations), as adopted by the County of Butte. The detached structure must be secure against unauthorized entry, accessible only through one (1)
or more lockable doors and may be constructed of any approved building materials, including glass, as long as the marijuana being cultivated cannot be seen from any public right-of-way. Any detached, fully-enclosed and secure structure used for the cultivation of marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure. Such structure shall be located in the rear yard area of a legal parcel or premises, maintain the setbacks set forth in section 34A-8 and the area surrounding the structure or back yard must be enclosed by a solid fence at least six (6) feet in height. When this Chapter requires that cultivation of marijuana occur indoors, the harvest of such marijuana shall also be accomplished indoors.

(14) “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).

(m) “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

(n) “Marijuana plant” means any mature or immature marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein. A “mature” marijuana plant is one whose sex can be determined by visual inspection.

(o) “Medical marijuana collective” means qualified patients, persons with valid identification cards, and the designated
primary caregivers of qualified patients who associate by agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate 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.

(p1) “Outdoors” means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(qm) “Parcel” means a "legal parcel" as defined herein.

(rn) “Premises” means a single, legal parcel of property that includes an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Sections 34A-6 and 34A-7. Where contiguous legal parcels are under common control or ownership, such contiguous legal parcels shall be counted as a single “premises” for purposes of this Chapter.

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

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

(uq) “Recommendation” means a written current recommendation signed by a licensed California physician pursuant to Health and Safety Code sections 11362.5 and 11352.7.
(v) “Retailer” means a person or business who obtains a state license for the retail sale and delivery of marijuana or marijuana products to customers.

(w) “Residential treatment facility” means a facility providing for treatment of drug and alcohol dependency, including any “sober living facility” run by treatment providers for the benefit of transitional living.

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

(y) “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.

(z) “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 to, or are to assemble at, in the event of an emergency or other incident at the school.

(aa) “Testing Laboratory” means a facility, entity, or site that offers or performs tests or marijuana or marijuana products.

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

34A-4 Nuisance Declared; Cultivation Restrictions on Personal Cultivation and Commercial Activities.

(a) The cultivation of marijuana on any parcel that does not satisfy the definition of a premises contained herein is hereby declared to be a public nuisance that may be abated in accordance with this Chapter.

(b) The cultivation of marijuana plants exceeding the following square footage limitations, on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter:

(1) If the premises is one-half (0.5) of an acre in size or less, plants may be cultivated in a single cultivation area no larger than fifty (50) square feet. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not
the stalk. The cultivation area shall have one (1) or more recommendations associated with the plants. The cultivation area must be located inside a detached structure that is no larger than one hundred twenty (120) square feet in size;

(2) If the premises is greater than one-half (0.5) of an acre in size but less than five (5) acres in size, a single cultivation area no larger than fifty (50) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have one (1) or more recommendations associated with the plants. The cultivation area may be either indoors or outdoors;

(3) If the premises is equal to or greater than five (5) acres in size but less than ten (10) acres in size, a single cultivation area no larger than one hundred (100) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have at least one (1) recommendation for every fifty (50) square feet of plants. The cultivation area may be either indoors or outdoors;

(4) If the premises is equal to or greater than ten (10) acres in size, a single cultivation area no larger than one hundred fifty (150) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured
from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have at least one (1) recommendation for every fifty (50) square feet of plants. The cultivation area may be either indoors or outdoors.

(c) The limitations of section 34A-4(b) shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, such limitations shall be imposed notwithstanding any assertion that the persons(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such persons(s) are collectively or cooperatively cultivating marijuana. And further, all persons(s) cultivating marijuana on the premises or participating directly or indirectly in the cultivation must be Butte County residents.

(d) The single cultivation area shall consist of one contiguous space. The length and width of the single cultivation area shall not exceed a ratio of 2:1.

(e) Except as otherwise authorized in this Chapter, any commercial activity, including but not limited to the cultivation, production, storage, processing, manufacturing, dispensing, distributing, laboratory testing, labeling, transportation, provision or sale of medical marijuana or medical marijuana products is prohibited in the unincorporated areas of the County of Butte.

(f) Notwithstanding subsection (e), the mobile delivery of
medical marijuana or medical marijuana products originating from a licensed retailer, to a customer located in an unincorporated area of Butte County, is not prohibited.


Any person may make a complaint relating to this Chapter.

34A-6. Residency requirements.

(a) Persons engaging in cultivation of medical marijuana shall meet the following requirements:

(1) Such person shall have resided in Butte County for at least one (1) year prior to cultivating medical marijuana in Butte County;

(2) As to the premises relating to the cultivation of medical marijuana, such persons shall either (A) own the premises or (B) have entered into a written lease with the actual owner of the premises.

(b) Persons who are members of a medical marijuana collective must be:

(1) a Butte County resident; or

(2) an immediate family member or primary caregiver of a Butte County resident. If a medical marijuana collective member is directly involved in the cultivation of medical marijuana, such member must be a resident of Butte County or an immediate family member or primary caregiver of a Butte County resident.

34A-7 Environmental requirements.

(a) All persons engaging in the cultivation of medical
marijuana shall (1) have a permitted permanent water well or connection to a municipal water source on the premises, (2) not engage in unlawful or unpermitted surface drawing of water for such cultivation and (3) not permit illegal discharges of water from the premises.

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

(c) Persons engaging in the cultivation and/or harvest of medical marijuana shall use, dispose and store chemicals used in such cultivation and/or harvest pursuant to applicable laws.

34A-8. Setbacks; Other Restrictions.

(a) Each detached structure or outdoor area constituting the single cultivation area in which the marijuana is cultivated shall be set back from the boundaries of the premises as follows:

(1) If the premises is one-half (0.5) of an acre in size or less, each detached structure shall be set back at least fifteen (15) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee reduces or waives this requirement based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements.

(2) If the premises is greater than one-half (0.5) of an acre in size but less than five (5) acres in size, each detached
structure or outdoor area constituting the single cultivation area
shall be set back at least fifty (50) feet from all boundaries of
the premises, unless the Director of the Department of Development
Services or his or her designee reduces or waives this requirement
based upon a finding of unusual hardship for that particular parcel
to comply with such setback requirements. Such cultivation area
shall be measured from the outer edge of the marijuana plant canopy
and not the stalk. Owners of parcels adjacent to such premises
shall be notified in writing of any exercise of such discretion
under this section.

(3) If the premises is equal to or greater than five (5)
acres in size but less than ten (10) acres in size, each detached
structure or outdoor area constituting the single cultivation area
shall be set back at least seventy-five (75) feet from all
boundaries of the premises, unless the Director of the Department
of Development Services or his or her designee reduces or waives
this requirement based upon a finding of unusual hardship for that
particular parcel to comply with such setback requirements. Owners
of parcels adjacent to such premises shall be notified in writing
of any exercise of such discretion under this section.

(4) If the premises is equal to or greater than ten (10)
acres in size, each detached structure or outdoor area shall be
set back at least one hundred fifty (150) feet from all boundaries
of the premises, unless the Director of the Department of
Development Services or his or her designee reduces or waives this
requirement based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall be notified in writing of any exercise of such discretion under this section.

(5) With respect to subsections 34A-8(a)(2-4), such setback distance shall be measured in a straight line from the building in which the marijuana is cultivated or if the marijuana is cultivated in an outdoor area, from the fence required by section 34A-10, to the boundary line of the premises.

(b) Notwithstanding the requirements of subsection 34A-4(a) above, the cultivation of marijuana, whether grown collectively or individually, in any amount or quantity, shall not be allowed in the following areas:

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

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

(3) Outdoors within one hundred (100) feet of any occupied residential structure located on a separate legal parcel, provided, however, that any person cultivating pursuant to section 34A-4(a)(2) shall not grow outdoors within fifty (50) feet of any occupied residential structure located on a separate legal parcel.

(4) In any location where the marijuana plants are visible from the public right of way or publicly traveled privately maintained roads.
(5) In any location in the following zones:

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

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

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

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

(d) No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this chapter.
(e) Persons processing marijuana on the premises shall meet the following requirements:

(1) All processing of marijuana shall occur Indoors;

(2) Persons may only process marijuana that they themselves have cultivated pursuant to this Chapter; and

(3) The setback requirements set out in Section 34A-8(a) for cultivation shall also apply to processing of marijuana.

34A-9 Permission of Property Owner.

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

34A-10 Fencing.

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

34A-11 Public Nuisance; Violations.
A violation of any provision of this Chapter shall be deemed to be
a public nuisance and subject to the enforcement process as set
forth in sections 34A-12 through 34A-17 of this Chapter.

34A-12 Enforcement.

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

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

34A-13 Abatement procedures.

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

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

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property
described on the latest equalized Butte
County tax roll as A.P. No._________ and
having a street address of ___________ is
(are) hereby notified to appear before a
Hearing Officer of the County of Butte at
___________ on ___________, 20_________,
at the hour of __________ o'clock
___________ m., to show cause, if any there
be, why the use of said real property should
not be found to be a public nuisance and abated
pursuant to the Butte County Code Chapter 34A.
The Department of Development Services has
determined that conditions exist on the above
property which constitute a public nuisance
and violate Butte County Code section(s)
__________, as follows: __________. After
hearing, if a violation is found to have
existed at the time the Notice of Nuisance
Abatement Hearing was posted on the property,
the Administrative Costs incurred in prosecuting the violation, including, but not limited to, the cost of the Hearing Officer, the cost of prior time and expenses associated with bringing the matter to hearing, attorneys' fees, the cost associated with any appeals from the decision of the Hearing Officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, the cost of securing expert and other witnesses, and the accrual of any Administrative Penalties, may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If a lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement,
that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that if an initial showing is made by the County, sufficient to persuade the Hearing Officer that a public nuisance existed on your property at the time the Notice of Nuisance Abatement Hearing was posted, you will then have the burden of proving that no public nuisance existed on your property. Therefore, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in this Chapter. A copy of the Butte County Code Chapter 34A relating to Medical Marijuana Cultivation nuisance abatement hearings is enclosed to assist you in the preparation of your presentation.

If an initial showing sufficient to persuade the Hearing Officer that a public nuisance existed on your property is made by the Code Enforcement Officer, your failure to sustain the burden of showing that no public nuisance existed on the property may result in a
decision by the Hearing Officer that a public 
nuisance did exist, and that the County is 
entitled to recover its Administrative Costs, 
and all Administrative Penalties that accrued 
up to the time that the nuisance was abated. 
Further, if the Hearing Officer finds that a 
public nuisance continues to exist on your 
property, and you fail to abate the nuisance 
promptly, the County may abate the nuisance. 
If the County abates the nuisance, in addition 
to being able to recover its Administrative 
Costs and Penalties, you may be responsible 
for the actual costs of the abatement. In 
either circumstance, all Administrative 
Costs, Abatement Costs, and Administrative 
Penalties may be specially assessed against 
your parcel by the Auditor-Controller's Office 
and added to the your tax bill as a special 
assessment. Such special assessments have the 
same priority, for collection purposes, as 
other county taxes and, if not paid, may 
result in a forced sale of your property. You 
are also hereby notified that the County will 
seek recovery of attorneys' fees incurred in
any hearing and that attorneys' fees may be recovered by the prevailing party.

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

IMPORTANT: READ THIS NOTICE CAREFULLY.

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

FAILURE TO APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN
ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND
TERMINATION OF USES OF OR CONDITIONS ON YOUR
PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT
SERVICES CONTENDS ARE IN VIOLATION OF THE
BUTTE COUNTY CODE.
Dated: __________/__________/__________
BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES
By:___________
Enclosure: Butte County Code Chapter 34A

(c) All hearings conducted under this Chapter shall be held
before a Hearing Officer designated pursuant to the protocol set
forth in that document entitled the "Butte County Administrative
Hearing Officer Program." The Program is based upon an alphabetical
rotation through attorneys currently under contract through the
Program.

(d) At the time and place set for the hearing, the Hearing
Officer shall hear testimony and receive written and/or
documentary evidence relating to the alleged violation. Additional
procedural rules may be adopted by resolution of the Board of
Supervisors. The Director of Development Services, or his or her
designee, shall tape record the hearing, and provide a copy of the
recording to the Hearing Officer following the conclusion of the
hearing. The Hearing Officer shall preserve the record of the
hearing, and all photographs and demonstrative and documentary

evidence introduced at the time of the hearing, for a period of

three (3) years.

(e) Within five (5) days after the hearing is closed, the

Hearing Officer shall render his or her written decision relating
to the existence or nonexistence of the alleged public nuisance.

If a violation is found to have existed at the time the Notice of
Nuisance Abatement Hearing was posted, the decision shall include
a statement that the County is entitled to recover its

Administrative Costs and Administrative Penalties. If the Hearing

Officer determines that the violation continues to exist, the
decision shall also order that the owner of the property, or
persons known to be in possession of the property, abate the

violation within a reasonable time, not to exceed ten (10) days

from the date the decision is placed in the mail. The decision

shall contain findings of fact and conclusions of law. A copy of

the decision shall be mailed by certified mail, return receipt

requested, to the person or persons shown on the last County tax

roll to be the owners of the property which is the subject of the

hearing and the occupant of such parcel, if any. All other persons

noticed pursuant to this section shall be mailed a copy of the
decision by first class mail, postage prepaid.

(f) The decision of the Hearing Officer shall be final and

conclusive on the date the certified mail set forth in subsection

(e) above, is deposited in the mail.

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(g)(1) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer finds that a violation exists and the public nuisance is not voluntarily abated within ten (10) days of said decision being placed in the mail by the Hearing Officer, the Director of Development Services or his or her designee may abate the public nuisance by cutting and/or removing all marijuana plants from the property, pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above, and Administrative Penalties. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs for each case. Upon completion of the abatement of the nuisance, whether by the Director of Development Services or his or her designee, or the owner or tenant, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs, as well as all Administrative Penalties. The bill shall also state that failure to pay the Costs and Penalties within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.
(2) If the County's Costs and Penalties are not paid within fifteen (15) days from service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property, and an itemized account of the County's Abatement Costs, Administrative Costs, and Administrative Penalties. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

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

(i) The notice of lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the Hearing Officer was issued, describe the real property subject to the lien, set forth the amount of the Costs and Penalties incurred to date and, if applicable, the date upon which the abatement was completed. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

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

(j) The decision of the Hearing Officer or Board of Supervisors may be recorded by the Director of Development Services. In the event of such recordation, and in the further event that the violation is corrected and all Costs and Penalties are paid, a notice of such correction shall be recorded. The Director of Development Services is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs, Administrative Costs, and Administrative Penalties as defined in sections 34A-14 and 34A-16 of this Chapter). In any action to foreclose on a lien issued pursuant to this Chapter, the County shall be entitled to an award of attorney’s fees.

34A-14 Abatement costs; Administrative costs.

(a) The term "Abatement Costs" means any costs or expenses reasonably related to the abatement of conditions which violate the Butte County Code, and shall include, but not be limited to, enforcement, investigation, attorneys' fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.
(b) The term "Administrative Costs," shall include the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets. The time expended by Development Services and Auditor-Controller staff, to calculate the above costs and prepare itemized invoices, may also be recovered.

(c) In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

34A-15 Non-exclusive remedy.
This Chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

34A-16 Administrative Civil Penalties.
In addition to any other remedies provided by County Code or State Law, there is hereby imposed the following civil penalty for each violation of this Chapter:

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

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

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

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

(e) Following the issuance of a Hearing Officer’s decision, the Director of Development Services, or his or her designee, may compromise the amount of any administrative penalty imposed by the Hearing Officer. When determining whether to compromise any penalty amount, the Director, or his or her designee, shall take into consideration the nature, circumstances, and gravity of the violation(s), any prior history of violations, the degree of culpability, the financial burden to the person(s) upon whom the penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for further legal action, and any other matters justice may require. The compromise shall be subject to any terms and conditions prescribed by the Director, or his or her designee, which may include, without limitation, a condition requiring that the subject legal property and all responsible parties remain free of any additional violations for a specified period of time. Any person accepting a compromise penalty hereunder shall be required
to execute a Compromise Agreement in a form approved by County Counsel.

34A-17 Summary Abatement.
Notwithstanding any other provision of this Chapter, when any unlawful medical marijuana cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in sections 34A-11 through 34A-14 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the County to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 34A-13 but the formal notice and hearing procedures set forth in this Chapter shall not apply. No summary abatement shall occur prior to consultation with the Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in this Chapter.

34A-18 No Duty to Enforce.
Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Butte any duty to issue a Notice to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for
failure to take any other action with regard to any unlawful marijuana cultivation.

34A-19 Use of Money Collected Under This Chapter.
All money collected for penalties for violations of this Chapter and all money collected for recovery of costs of enforcement of this Chapter shall be made available to the Departments, who are involved in the enforcement of this Chapter.

Ordinance No. _____
PASSED and ADOPTED by the Board of Supervisors of the County of Butte, State of California on the ___ day of _________, 2017.
AN ORDINANCE OF THE COUNTY OF BUTTE AMENDING SECTIONS 34A-1, 34A-2, 34A-3 AND 34A-4 OF CHAPTER 34A OF THE BUTTE COUNTY CODE.

Section 1. Section 34A-1 of the Butte County Code is amended by only by strikeout as follows:

34A-1 Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.83 and 11362.768(f), and Government Code section 25845, the Board of Supervisors does enact this Chapter, which shall be known and may be cited as the "Butte County Medical Marijuana Cultivation Ordinance."

Section 2. Section 34A-2 is amended by adding the following:

34A-2 Findings and Purpose.

(t) Following the passage of the Medical Marijuana Regulation and Safety Act, an increasing number of individuals and businesses began offering mobile delivery of marijuana to customers in the unincorporated areas of Butte County, as evidenced by advertisements online and in local publications, such as the Chico News & Review.

(u) On November 8, 2016 Californians voted to legalize the non-medical use of marijuana via Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). AUMA
creates a state regulatory and licensing system that governs the commercial cultivation, testing and distribution of non-medical marijuana, and the manufacturing of non-medical marijuana products. However, AUMA authorizes local jurisdictions to completely prohibit the establishment or operation of any non-medical marijuana business within its jurisdiction.

(v) On June 27, 2017 Governor Brown signed into law Senate Bill 94, which provides a single regulatory structure for commercial activities involving both medical and non-medical marijuana. The unified structure repeals the collective/cooperative model, and establishes a strict licensing scheme, whereby all commercial marijuana activities, including retail sales and deliveries, are required to be conducted between licensees.

(w) In January of 2018 the State of California will begin issuing licenses for various commercial activities, including cultivation, nurseries, manufacturing, testing, and retail sales and deliveries. However, SB 94 allows local jurisdictions to adopt and enforce ordinances that either regulate those commercial businesses to be licensed by the state, or completely prohibit the establishment or operation of any or all commercial activities within their local jurisdictions.

(x) It is also the purpose and intent of this Chapter to regulate commercial activities involving medical marijuana in a manner that is consistent with state law, and that promotes the
health, safety, and general welfare of the residents and businesses located within the unincorporated areas of Butte County.

Section 3. Section 34A-3 is amended by strikeout and/or underline as follows:

34A-3 Definitions.

(d) "Commercial activity" means any enterprise or activity, whether or not for profit, concerning the cultivation, production, storage, processing, manufacture, dispensing, delivery, distribution, laboratory testing, labeling, transportation, provision, or sale of marijuana or marijuana products.

(ee) "Cultivation" means the planting and growing of one (1) or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

(f) "Delivery" means the commercial transfer of marijuana or marijuana products to a customer 21 years of age or older.

(g) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between licensed entities. Distribution does not include such transactions if done directly to an individual end-user.

(he) "Enforcing Officer" means the Code Enforcement Officer or his or her authorized deputies or designees, each of whom is independently authorized to enforce this Chapter.
(i) "Fence" means a wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials approved by the Department of Development Services for the purpose of enclosing space or separating parcels of land. The term "fence" does not include retaining walls.

(j) "Harvest" means the drying, processing, or storage of marijuana which may only occur in a fully enclosed and secure building.

(k) "Indoors" means within one (1) fully enclosed and secure detached structure that complies with the California Building Standards Code (Title 24 California Code of Regulations), as adopted by the County of Butte. The detached structure must be secure against unauthorized entry, accessible only through one (1) or more lockable doors and may be constructed of any approved building materials, including glass, as long as the marijuana being cultivated cannot be seen from any public right-of-way. Any detached, fully-enclosed and secure structure used for the cultivation of marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure. Such structure shall be located in the rear yard area of a legal parcel or premises, maintain the setbacks set forth in section 34A-8 and the area surrounding the structure or back yard must be enclosed by a solid fence at least six (6) feet in height. When this Chapter requires
that cultivation of marijuana occur indoors, the harvest of such
marijuana shall also be accomplished indoors.

(¶¶) "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

(m) "Manufacture" means to compound, blend, extract, infuse,
or otherwise make or prepare a marijuana product.

(n¶) "Marijuana plant" means any mature or immature marijuana
plant, or any marijuana seedling, unless otherwise specifically
provided herein. A "mature" marijuana plant is one whose sex can
be determined by visual inspection.

(o‡) "Medical marijuana collective" means qualified patients,
persons with valid identification cards, and the designated
primary caregivers of qualified patients who associate by
agreement, or form a cooperative in accordance with Section 12300
of the Corporations Code within the unincorporated area of the
County in order to collectively or cooperatively cultivate
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.

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

(qm) "Parcel" means a "legal parcel" as defined herein.
"Premises" means a single, legal parcel of property that includes an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Sections 34A-6 and 34A-7. Where contiguous legal parcels are under common control or ownership, such contiguous legal parcels shall be counted as a single "premises" for purposes of this Chapter.

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

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

"Recommendation" means a written current recommendation signed by a licensed California physician pursuant to Health and Safety Code sections 11362.5 and 11352.7.

"Retailer" means a person or business who obtains a state license for the retail sale and delivery of marijuana or marijuana products to customers.

"Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency, including any "sober living facility" run by treatment providers for the benefit of transitional living.

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

(yt) "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.

(zw) "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 to, or are to assemble at, in the event of an emergency or other incident at the school.

(aa) "Testing Laboratory" means a facility, entity, or site that offers or performs tests or marijuana or marijuana products.

(bbw) "Youth-oriented facility" means elementary school, middle school, junior high school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a day care or preschool facility.
Section 4. Section 34A-4 is amended only by strikeout and/or underline as follows:

34A-4 Nuisance Declared; Cultivation—Restrictions on Personal Cultivation and Commercial Activities.

e) Except as otherwise authorized in this Chapter, any commercial activity, including but not limited to the cultivation, production, storage, processing, manufacturing, dispensing, distributing, laboratory testing, labeling, transportation, provision or sale of medical marijuana or medical marijuana products is prohibited in the unincorporated areas of the County of Butte.

(f) Notwithstanding subsection (e), the mobile delivery of medical marijuana or medical marijuana products originating from a licensed retailer, to a customer located in an unincorporated area of Butte County, is not prohibited.

Section 5. (CEQA). The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will 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 6. Severability. If any provision of this Chapter or the
application thereof to any person or circumstance is held invalid,
the remainder of this Chapter, including the application of such
party or provision to other circumstances shall not be affected
thereby and shall continue in full force and effect. To this end,
provisions of this Chapter are severable. The Board of Supervisors
hereby declares that it would have passed each section,
subsections, subdivisions, paragraphs, sentences, clauses or
phrases be held unconstitutional, invalid or unenforceable.

Section 6. Effective Date and Publication. The Clerk of the Board
will publish the Ordinance codified in this Chapter as required by
law. The Ordinance codified in this Chapter shall take effect
thirty (30) days after final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of
Butte, State of California, on the ___ day of __________ 2017,
by the following vote:
AYES:

NOES:

ABSENT:

NOT VOTING:

Bill Connelly, Chair of the
Butte County Board of Supervisors

ATTEST:

Paul Hahn,
Chief Administrative Officer and
Clerk of the Board

By: ________________________
Deptuy
CHAPTER 34C OF THE BUTTE COUNTY CODE — BUTTE COUNTY NONMEDICAL
MARIJUANA ORDINANCE.

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

34C-2 Findings and Purpose.

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

(b) The stated purpose of the AUMA 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.

(c) The AUMA creates a licensing scheme whereby the State
will issue licenses to businesses authorizing them to cultivate,
distribute, transport, store, manufacture, process, and sell
nonmedical marijuana and marijuana products for adults 21 years of
age and older, with such licenses expected to be issued by January
1, 2018.
(d) The AUMA states that nothing in it shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the AUMA. The AUMA allows local governments to ban nonmedical marijuana businesses, and mandates that the State licensing authorities shall not approve an application for a State license if approval of the State license will violate the provisions of any local ordinance or regulation adopted in accordance with the requirements of the AUMA.

(e) The AUMA provides that it shall be lawful under state and local law for persons 21 years of age and older to plant, cultivate, harvest, dry, or possess not more than six marijuana plants, and possess the marijuana produced by the plants, subject to the following restrictions: 1) A person shall plant, cultivate, harvest, dry or possess plants in accordance with local ordinances; 2) the plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of a private residence, in a locked space, and not visible by normal unaided vision from a public place; and 3) not more than six plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of a private residence, at any one time.

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

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

(h) In a series of memoranda issued in October 2009, June 2011, and August 2013, the U.S. Department of Justice provided guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act, and generally advised that it is not likely an efficient use of federal resources to prosecute those persons or entities acting in compliance with a strong and effective state regulatory system for the cultivation and distribution of marijuana. These guidelines are understood to allow states to legalize marijuana so long as the state laws adequately address the following goals of preventing: (1) distribution of marijuana to minors; (2) revenue from the sale of marijuana going to criminal enterprises; (3) diversion of
marijuana from states where it is legal under state law to other states; (4) state authorized marijuana activity from being used as a cover for the trafficking of other illegal drugs; (5) violence and the use of firearms in the cultivation and distribution of marijuana (6) drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) growing of marijuana on public lands and the attendant public safety environmental dangers; and (8) possession or use of marijuana on federal property.

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

(j) The County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and preserving the peace and integrity of the unincorporated areas in the County. In the past, significant concerns have been raised regarding the land use impacts that the possession, planting, cultivation, harvesting, drying, processing, distributing, transporting, storing, manufacturing, and sale of marijuana will have on the public health, safety, and welfare of the residents of Butte County, and the environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary
to avoid the risks of criminal activity, degradation of the natural
environment, malodorous smells, and indoor electrical fire hazards
that may result from unregulated marijuana cultivation.

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

(l) It is the purpose and intent of this Chapter to
implement State law by providing a means for regulating the
cultivation of nonmedical marijuana in a manner that is consistent
with State law, and in a manner that promotes the health, safety,
and welfare of the residents and businesses within the
unincorporated territory of the County of Butte.

(m) It is also the purpose and intent of this Chapter to
provide a complaint-driven civil process to remedy nuisances
related to nonmedical marijuana cultivation.
(n) In 2015, the California legislature enacted the Medical Marijuana Regulation and Safety Act ("MMRSA"), which set forth a new structure for licensing and enforcement of medical marijuana cultivation, product manufacturing, testing, transportation, and distribution. Following the passage of the MMRSA, an increasing number of individuals and businesses began offering mobile delivery of marijuana to customers in the unincorporated areas of Butte County, as evidenced by advertisements online and in local publications, such as the Chico News & Review.

(o) On June 27, 2017 Governor Brown signed into law Senate Bill 94, which provides a single regulatory structure for commercial activities involving both medical and non-medical marijuana. The unified structure establishes a strict licensing scheme whereby all commercial marijuana activities, including retail sales and deliveries, are required to be conducted by licensees.

(p) In January of 2018 the State of California will begin issuing licenses for various commercial activities, including cultivation, nurseries, manufacturing, testing, and retail sales and deliveries. However, SB 94 allows local jurisdictions to adopt and enforce ordinances that either regulate those commercial businesses to be licensed by the state, or completely prohibit the establishment or operation of any or all commercial activities within their local jurisdictions.

(q) It is also the purpose and intent of this Chapter to
regulate commercial activities involving nonmedical marijuana in
a manner that is consistent with state law, and that promotes the
health, safety, and general welfare of the residents and businesses
located within the unincorporated areas of Butte County.

34C-3 Definitions.
Except where the context otherwise requires, the following
definitions shall govern the construction of this Chapter:

(a) “Accessory structure” means a fully enclosed structure
that is located on the grounds of a “private residence,” and is
detached from the “private residence,” as that term is defined
herein.

(b) “Child Care Center” means any licensed child care center,
daycare center, or childcare home, or any preschool.

(c) “Church” means a structure or leased portion of a
structure, which is used primarily for religious worship and
related religious activities.

(d) “Code Enforcement Officer” means any person employed by
the County of Butte and appointed to the position of code
enforcement officer.

(e) “Commercial activity” means any enterprise or activity,
whether or not for profit, concerning the cultivation, production,
storage, processing, manufacture, dispensing, delivery,
distribution, laboratory testing, labeling, transportation,
provision, or sale of marijuana or marijuana products.

(f) “Cultivation” means any activity involving the
planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

(g) "Delivery" means the commercial transfer of marijuana or marijuana products to a customer 21 years of age or older.

(h) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between licensed entities. Distribution does not include such transactions if done directly to an individual end-user.

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

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

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

(l) "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).

(m) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

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

(o) “Outdoors” means any location that is not "indoors" as defined herein.

(p) “Parcel” means a "legal parcel" as defined herein.

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

(r) “Private residence” means a house, apartment unit, mobile home, or other similar dwelling.

(s) “Residential treatment facility” means a facility providing for treatment of drug and alcohol dependency, including any “sober living facility” run by treatment providers for the benefit of transitional living.

(t) “Retailer” means a person or business who obtains a state license for the retail sale and delivery of marijuana or marijuana products to customers.

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

(ve) "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.

(wr) "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 to, or are to assemble at, in the event of an emergency or other incident at the school.

(x) "Testing Laboratory" means a facility, entity, or site that offers or performs tests or marijuana or marijuana products.

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

34C-4 Nuisance Declared; – Cultivation Restrictions on Personal Cultivation and Commercial Activities.

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

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

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

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

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

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

(d) Except as otherwise authorized in this Chapter, any
commercial activity, including but not limited to the cultivation,
production, storage, processing, manufacturing, dispensing,
distributing, laboratory testing, labeling, transportation,
provision or sale of nonmedical marijuana or nonmedical marijuana
products is prohibited in the unincorporated areas of the County
of Butte.

(e) Notwithstanding subsection (d), the mobile delivery of
nonmedical marijuana or nonmedical marijuana products originating
from a licensed retailer, to a customer located in an
unincorporated area of Butte County, is not prohibited.

34C-5. Complaints.

Any person may make a complaint relating to this Chapter.

34C-6. Residency requirements.

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

34C-7 Environmental requirements.

(a) Any parcel where the cultivation of marijuana takes
place shall: (1) have a permitted permanent water well or
close connection to a municipal water source on the premises; (2) not
engage in unlawful or unpermitted surface drawing of water for
such cultivation; and (3) not permit illegal discharges of water
from the premises.

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

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

34C-8. Setbacks; Other Restrictions.

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

(1) If the premises is less than five (5) acres, and the
marijuana cultivation takes place inside an accessory structure,
the accessory structure shall be set back at least fifteen (15)
feet from all boundaries of the premises, unless the Director of
the Department of Development Services or his or her designee
reduces or waives this requirement based upon a finding of unusual
hardship for that particular parcel to comply with such setback
requirements. Owners of parcels adjacent to such premises shall
be notified in writing of any exercise of such discretion under this section.

(2) If the premises is equal to or greater than five (5) acres in size, the accessory structure or outdoor garden area constituting the single cultivation area shall be set back at least seventy-five (75) feet from all boundaries of the premises, unless the Director of the Department of Development Services or his or her designee reduces or waives this requirement based upon a finding of unusual hardship for that particular parcel to comply with such setback requirements. Owners of parcels adjacent to such premises shall be notified in writing of any exercise of such discretion under this section.

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

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

(1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein.
(2) Within six hundred (600) feet from a school bus stop.

(3) Outdoors within one hundred (100) feet of any occupied residential structure located on a separate legal parcel, provided, however, that any person cultivating pursuant to section 34C-4(a)(2) shall not grow outdoors within seventy-five (75) feet of any occupied residential structure located on a separate legal parcel.

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

(5) In any location in the following zones:

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

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

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

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

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

34C-9 Permission of Property Owner.

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

34C-10 Fencing.

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

34C-11 Public Nuisance; Violations.

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

34C-12 Enforcement.

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

(b) The County may also abate a violation of this Chapter
through the abatement process established by Government Code
Section 25845.
34C-13 Abatement procedures.

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

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

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property described on the latest equalized Butte County tax roll as A.P. No._________ and having a street address of ________ is (are) hereby notified to appear before a Hearing Officer of the County of Butte at ________, on ________, 20________, at the hour of ________ o'clock ________ m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Butte County Code Chapter 34C. The Department of Development Services has determined that conditions exist on the above property which constitute a public nuisance and violate Butte County Code section(s) ________, as follows: ________. After hearing, if a violation is found to have
existed at the time the Notice of Nuisance Abatement Hearing was posted on the property, the Administrative Costs incurred in prosecuting the violation, including, but not limited to, the cost of the Hearing Officer, the cost of prior time and expenses associated with bringing the matter to hearing, attorneys' fees, the cost associated with any appeals from the decision of the Hearing Officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, the cost of securing expert and other witnesses, and the accrual of any Administrative Penalties, may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If a lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial
proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that if an initial showing is made by the County, sufficient to persuade the Hearing Officer that a public nuisance existed on your property at the time the Notice of Nuisance Abatement Hearing was posted, you will then have the burden of proving that no public nuisance existed on your property. Therefore, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in this Chapter. A copy of the Butte County Code Chapter 34C relating to Marijuana Cultivation nuisance abatement hearings is enclosed to assist you in the preparation of your presentation.

If an initial showing sufficient to persuade the Hearing Officer that a public nuisance existed on your property is made by the Code Enforcement Officer, your failure to sustain the burden of showing that no public nuisance existed on the property may result in a
decision by the Hearing Officer that a public nuisance did exist, and that the County is entitled to recover its Administrative Costs, and all Administrative Penalties that accrued up to the time that the nuisance was abated. Further, if the Hearing Officer finds that a public nuisance continues to exist on your property, and you fail to abate the nuisance promptly, the County may abate the nuisance. If the County abates the nuisance, in addition to being able to recover its Administrative Costs and Penalties, you may be responsible for the actual costs of the abatement. In either circumstance, all Administrative and Abatement Costs may be specially assessed against your parcel by the Auditor-Controller's Office and added to your tax bill as a special assessment, and all Administrative Penalties may be recorded against your property as a judgment lien. Special assessments have the same priority, for collection purposes, as other county taxes and, if not paid, may result in a forced sale of your property. You are also hereby notified that the County will seek recovery of
attorneys' fees incurred in any hearing and that attorneys' fees may be recovered by the prevailing party.

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

IMPORTANT: READ THIS NOTICE CAREFULLY.

IN ADDITION TO ANY ADMINISTRATIVE CIVIL PENALTIES THAT HAVE ALREADY ACCRUED, AN ADMINISTRATIVE CIVIL PENALTY OF $1,000 PER DAY IS HEREBY IMPOSED FROM THE DATE THIS NOTICE WAS POSTED ON YOUR PROPERTY, AND WILL CONTINUE TO ACCRUE AT THAT RATE UNTIL THE NUISANCE IS ABATED. IN ORDER TO PREVENT THE ACCRUAL OF ONGOING PENALTIES AND COSTS, YOU MUST CONTACT THE CODE ENFORCEMENT OFFICE, AND ARRANGE A TIME FOR A CODE ENFORCEMENT OFFICER TO INSPECT YOUR PROPERTY, AND CONFIRM THAT THE VIOLATION(S) HAVE BEEN CORRECTED.
FAILURE TO APPEAR AND RESPOND AT THE TIME SET
FORTH IN THIS NOTICE WILL LIKELY RESULT IN
ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND
TERMINATION OF USES OF OR CONDITIONS ON YOUR
PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT
SERVICES CONTENTS ARE IN VIOLATION OF THE
BUTTE COUNTY CODE.
Dated: __________/__________/__________

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES
By: __________

Enclosure: Butte County Code Chapter 34C

(c) All hearings conducted under this Chapter shall be held
before a Hearing Officer designated pursuant to the protocol set
forth in that document entitled the "Butte County Administrative
Hearing Officer Program." The Program is based upon an alphabetical
rotation through attorneys currently under contract through the
Program.

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

(e) Within five (5) days after the hearing is closed, the
Hearing Officer shall render his or her written decision relating
to the existence or nonexistence of the alleged public nuisance.
If a violation is found to have existed at the time the Notice of
Nuisance Abatement Hearing was posted, the decision shall include
a statement that the County is entitled to recover its
Administrative Costs and Administrative Penalties. If the Hearing
Officer determines that the violation continues to exist, the
decision shall also order that the owner of the property, or
persons known to be in possession of the property, abate the
violation within a reasonable time, not to exceed ten (10) days
from the date the decision is placed in the mail. The decision
shall contain findings of fact and conclusions of law. A copy of
the decision shall be mailed by certified mail, return receipt
requested, to the person or persons shown on the last County tax
roll to be the owners of the property which is the subject of the
hearing and the occupant of such parcel, if any. All other persons
noticed pursuant to this section shall be mailed a copy of the
decision by first class mail, postage prepaid.

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

(g)(1) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer finds that a violation exists and the public nuisance is not voluntarily abated within ten (10) days of said decision being placed in the mail by the Hearing Officer, the Director of Development Services or his or her designee may abate the public nuisance by cutting and/or removing all marijuana plants from the property, pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above, and Administrative Penalties. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs for each case. Upon completion of the abatement of the nuisance, whether by the Director of Development Services or his or her designee, or the owner or tenant, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs, as well as all Administrative Penalties. The bill shall also state that failure to pay the Costs and Penalties within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment
against the property.

(2) If the County's Costs and Penalties are not paid within fifteen (15) days from service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property, and an itemized account of the County's Abatement Costs, Administrative Costs, and Administrative Penalties. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

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

(i) The notice of lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the Hearing Officer was issued, describe the real property subject to the lien, set forth the amount of the Costs and Penalties incurred to date and, if applicable, the date upon which the abatement was completed. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

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

(j) The decision of the Hearing Officer or Board of Supervisors may be recorded by the Director of Development Services. In the event of such recordation, and in the further event that the violation is corrected and all Costs and Penalties are paid, a notice of such correction shall be recorded. The Director of Development Services is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs, Administrative Costs, and Administrative Penalties as defined in sections 34C-14 and 34C-16 of this Chapter). In any action to foreclose on a lien issued pursuant to this Chapter, the County shall be entitled to an award of attorney's fees.

34C-14 Abatement costs; Administrative costs.

(a) The term "Abatement Costs" means any costs or expenses reasonably related to the abatement of conditions which violate the Butte County Code, and shall include, but not be limited to, enforcement, investigation, attorneys' fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.
(b) The term "Administrative Costs," shall include the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets. The time expended by Development Services and Auditor-Controller staff, to calculate the above costs and prepare itemized invoices, may also be recovered.

(c) In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

34C-15 Non-exclusive remedy.

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

34C-16 Administrative Civil Penalties.

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

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

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

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

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

(e) Following the issuance of a Hearing Officer’s decision, the Director of Development Services, or his or her designee, may compromise the amount of any administrative penalty imposed by the Hearing Officer. When determining whether to compromise any penalty amount, the Director, or his or her designee, shall take into consideration the nature, circumstances, and gravity of the violation(s), any prior history of violations, the degree of culpability, the financial burden to the person(s) upon whom the penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for further legal action, and any other matters justice may require. The compromise shall be subject to any terms and conditions prescribed by the Director, or his or her designee, which may include, without limitation, a condition requiring that the subject legal property and all responsible parties remain free of any additional violations for a specified period of time. Any person accepting a compromise penalty hereunder shall be required to execute a Compromise Agreement in a form approved by County
Counsel.

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

34C-18 No Duty to Enforce.
Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Butte any duty to issue a Notice to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful
marijuana cultivation.

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

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

Section 2. (CEQA). The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will 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 3. Severability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors
hereby declares that it would have passed each section, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 4. Effective Date and Publication. The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect thirty (30) days after final passage.

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

AYES:

NOES:

ABSENT:

NOT VOTING:

Bill Connelly, Chair of the Butte County Board of Supervisors

ATTEST:

Paul Hahn,
Chief Administrative Officer and Clerk of the Board

By: ____________________________
    Deputy
AN ORDINANCE OF THE COUNTY OF BUTTE AMENDING SECTIONS 34C-2,
34C-3, AND 34C-4 OF CHAPTER 34C OF THE BUTTE COUNTY CODE.

Section 1. Section 34C-2 of the Butte County Code is amended by
adding the following:

34C-2 Findings and Purpose.

(n) In 2015, the California legislature enacted the Medical
Marijuana Regulation and Safety Act ("MMRSA"), which set forth a
new structure for licensing and enforcement of medical marijuana
cultivation, product manufacturing, testing, transportation, and
distribution. Following the passage of the MMRSA, an increasing
number of individuals and businesses began offering mobile
delivery of marijuana to customers in the unincorporated areas of
Butte County, as evidenced by advertisements online and in local
publications, such as the Chico News & Review.

(o) On June 27, 2017 Governor Brown signed into law Senate
Bill 94, which provides a single regulatory structure for
commercial activities involving both medical and non-medical
marijuana. The unified structure establishes a strict licensing
scheme whereby all commercial marijuana activities, including
retail sales and deliveries, are required to be conducted by
licensees.

(p) In January of 2018 the State of California will begin
issuing licenses for various commercial activities, including
cultivation, nurseries, manufacturing, testing, and retail sales and deliveries. However, SB 94 allows local jurisdictions to adopt and enforce ordinances that either regulate those commercial businesses to be licensed by the state, or completely prohibit the establishment or operation of any or all commercial activities within their local jurisdictions.

(q) It is also the purpose and intent of this Chapter to regulate commercial activities involving nonmedical marijuana in a manner that is consistent with state law, and that promotes the health, safety, and general welfare of the residents and businesses located within the unincorporated areas of Butte County.

Section 2. Section 34C-3 is amended only by strikeout and/or underline as follows:

34C-3 Definitions.

(e) "Commercial activity" means any enterprise or activity, whether or not for profit, concerning the cultivation, production, storage, processing, manufacture, dispensing, delivery, distribution, laboratory testing, labeling, transportation, provision, or sale of marijuana or marijuana products.

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

(g) "Delivery" means the commercial transfer of marijuana or
marijuana products to a customer 21 years of age or older.

(h) "Distribution" means the procurement, sale, and transport
of marijuana and marijuana products between licensed entities.
Distribution does not include such transactions if done directly
to an individual end-user.

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

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

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

(l) "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

(m) "Manufacture" means to compound, blend, extract, infuse,
or otherwise make or prepare a marijuana product.

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

(o) "Outdoors" means any location that is not "indoors" as
defined herein.
"Parcel" means a "legal parcel" as defined herein.

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

"Private residence" means a house, apartment unit, mobile home, or other similar dwelling.

"Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency, including any "sober living facility" run by treatment providers for the benefit of transitional living.

"Retailer" means a person or business who obtains a state license for the retail sale and delivery of marijuana or marijuana products to customers.

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

"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
2 Code section 233, or school pupil activity buses, as defined in
3 Vehicle Code section 546.
4
5 (w) "School Evacuation Site" means any location designated
6 by formal action of the governing body, Superintendent, or
7 principal of any school as a location to which juveniles are to be
8 evacuated to, or are to assemble at, in the event of an emergency
9 or other incident at the school.
10
11 (x) "Testing Laboratory" means a facility, entity, or site
12 that offers or performs tests or marijuana or marijuana products.
13
14 (y) "Youth-oriented facility" means elementary school,
15 middle school, junior high school, high school, public park, and
16 any establishment that advertises in a manner that identifies the
17 establishment as catering to or providing services primarily
18 intended for minors, or the individuals who regularly patronize,
19 congregate or assemble at the establishment are predominantly
20 minors. This shall not include a day care or preschool facility.
21
22 Section 3. Section 34C-4 is amended only by strikeout and/or
23 underline as follows:
24
25 34C-4 Nuisance Declared; Cultivation Restrictions on Personal
26 Cultivation and Commercial Activities.
27
28 (d) Except as otherwise authorized in this Chapter, any
29 commercial activity, including but not limited to the cultivation,
production, storage, processing, manufacturing, dispensing, distributing, laboratory testing, labeling, transportation, provision or sale of nonmedical marijuana or nonmedical marijuana products is prohibited in the unincorporated areas of the County of Butte.

(e) Notwithstanding subsection (d), the mobile delivery of nonmedical marijuana or nonmedical marijuana products originating from a licensed retailer, to a customer located in an unincorporated area of Butte County, is not prohibited.

Section 4. (CEQA). The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will 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 5. Severability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid,
the remainder of this Chapter, including the application of such
duty or provision to other circumstances shall not be affected
thereby and shall continue in full force and effect. To this end,
provisions of this Chapter are severable. The Board of Supervisors
hereby declares that it would have passed each section,
subsections, subdivisions, paragraphs, sentences, clauses or
phrases be held unconstitutional, invalid or unenforceable.

Section 6. Effective Date and Publication. The Clerk of the Board
will publish the Ordinance codified in this Chapter as required by
law. The Ordinance codified in this Chapter shall take effect
thirty (30) days after final passage.

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

AYES:
NOES:
ABSENT:
NOT VOTING:

Bill Connelly, Chair of the
Butte County Board of Supervisors
ATTEST:

Paul Hahn,
Chief Administrative Officer and
Clerk of the Board

By: ____________________________
    Deputy