

A Pot Paradox or Bud Bingo?

A Report on Medical Marijuana Dispensaries in Mendocino County

April 20, 2011

Summary

Mendocino County does not currently have a Medical Marijuana Dispensary (MMJD) ordinance to regulate or monitor the number or types of medical marijuana dispensaries that operate inside its county boundaries. Given the fact that Mendocino County has gained worldwide attention for the apparent ideal conditions for the production of marijuana, the 2010-2011 Mendocino County Grand Jury (GJ) investigated the issues surrounding the county's proposed adoption of a Medical Marijuana Dispensary ordinance. These businesses, designated by the County, are authorized or regulated under the County Code to dispense Medical Marijuana (MMJ). The GJ concludes that the County is wise to adopt a countywide MMJD ordinance, with the benefits of adoption outweighing the risks of not taking some sort of action in response to the matter. Without the presence of an ordinance, the legality of existing MMJD's in Mendocino County is uncertain.

Background

Many of the 58 California Counties have struggled or are struggling with the issues surrounding the adoption of MMJD ordinances. While Mendocino County has currently not taken action on the adoption of such an ordinance, a number of dispensaries have been opened by individuals in this county. Across the State of California, county MMJD ordinances vary in degree, and range from outright prohibition of dispensaries, to legally-worded complex rules that include in their ordinances who, where, and how dispensaries can be established or maintained.

Findings

1. Mendocino County has not adopted any ordinance concerning Medical Marijuana Dispensary regulation, or whether or not dispensaries are collectives.
2. Other city and county jurisdictions in California have enacted marijuana dispensary ordinances that govern the location, size, and number under either planning or zoning ordinances, or by action of their Board of Supervisors.
3. The Treasurer-Tax Collector is unable to accurately state how many MMJDs or Collective business licenses have been issued.
4. A proposed ordinance named *Ordinance adding Chapter 9.32 of Title 9 of the Mendocino County Code Entitled Medical Marijuana Dispensing Collective Regulation* by County Counsel was introduced to a committee of the Mendocino County Board of Supervisors (BOS) in October 2009, (Appendix A).
5. A BOS committee instructed County Counsel to cease work on the ordinance, and the draft was never considered for action by the BOS.

6. An undetermined number of MMJDs have been established within the county boundaries.
7. Two dispensaries have recently been established in Mendocino Township. These dispensaries are located within 1000 feet of areas frequented by school-aged children in the town.
8. The Sheriff publicly stated that 30% of his staff's time is devoted to marijuana issues.
9. Effective March 1, 2010, San Jose city residents voted for Measure U, City Ordinance 4.66, in favor of a special marijuana 7% business (gross receipt) tax.
10. After the passage of Proposition 26 in November 2010, a super-majority of the voters in Mendocino County would have to support a gross receipt tax on MMJDs to be enacted in Mendocino County.
11. Due to the lack of a MMJD ordinance:
 - any number of dispensaries can be established anywhere in the county with merely the acquisition of a business license,
 - there is no enforcement/abatement actions of existing public nuisance codes under Mendocino County Ordinance 9.31 against establishing or operating MMJD,
 - the needs of neighbors and communities to be protected from public safety impacts of MMJDs is not met,
 - there are no grounds for denial by the county, of a MMJD except the limitations imposed by the business license process.

Recommendations

The Grand Jury recommends that:

1. the BOS adopt a Medical Marijuana Dispensing ordinance, (All Findings)
2. the BOS consider a 60-day grace period for existing Medical Marijuana Dispensaries to be in compliance with an adopted ordinance, (All Findings)
3. the adopted ordinance address mobile dispensaries, (All Findings)
4. the adopted ordinance address public and neighborhood safety/surveillance, (All Findings)
5. the adopted ordinance address the production and sale of related food-based MMJ products and paraphernalia, (All Findings)
6. the adopted ordinance address the issues surrounding onsite production of MMJ and its associated food products and paraphernalia, (All Findings)
7. the adopted ordinance address the establishment of fees and penalties that cover the actual cost of regulation and enforcement, (All Findings)
8. the adopted ordinance address patient/caregiver relationships, (All Findings)

9. the adopted ordinance address MMJ transportation issues within the county, (All Findings)
10. the adopted ordinance include a definition of a mature female MMJ plant, (All Findings)
11. the adopted ordinance include a minimum age limit for anyone entering a MMJ Dispensary, (All Findings)
12. the BOS pass a moratorium suspending the establishment and operation of new MMJDs in Mendocino County, which would expire upon adoption of an ordinance, (All Findings)
13. the BOS define a MMJD, and whether or not it should be a collective, (All Findings)
14. the Treasurer-Tax Collector develop a system to accurately track the number and type of MMJ Dispensary business licenses issued, (Finding 3)

Discussion

The licensing of MMJDs raises the issue of whether, by enacting an ordinance, the County of Mendocino would have liability for and be complicit in violating Federal Marijuana laws. This is a concern that has been raised in many of the counties that have either passed an ordinance or are considering an ordinance.

The regulation of MMJ varies considerably across the country. MMJ is legal in Washington, D.C., and 15 states. Many of them have minimal regulations aimed at limiting the amount of marijuana that a patient can legally possess and cultivate. Other regulations tend to be a patchwork: some states require patients to register, but some don't; some allow dispensaries, while others rely on patients to grow the marijuana themselves or obtain it from registered "caregivers".

New Jersey, Arizona and Washington, D.C., are all working on comprehensive regulation. Meanwhile, individual cities and counties in many states are busy drafting restrictions. The federal government's legal challenges over large-scale grows seem to be part of a broader federal effort to bring the state's booming medical marijuana industry into order.

Other issues not addressed in this report include these topics:

- MMJ existing either as a food or a drug commodity, and the associated applicability of Williamson Act Provisions,
- Civil vs. Criminal enforcement of Federal Drug and Tax Laws,
- Implications of income, employment or excise taxes on the cultivation, production and sale of MMJ.

The Grand Jury believes that this issue is a far-reaching topic worthy of serious and immediate attention by the BOS. In order to avoid any appearance of conflict of interest,

the Grand Jury feels that members of the BOS, who may have in the past, or may be currently involved in the production of MMJ, recuse themselves from any vote on this matter.

The Grand Jury is calling for the regulation of MMJDs before damage is done to the health, well-being and safety of our county. Is it possible that in Mendocino County, MMJ could be converted from a cost center to a legitimate government revenue center?

Required Responses

Mendocino County Board of Supervisors (All Findings; All Recommendations)

Mendocino County Sheriff (All Findings; All Recommendations)

Mendocino County Counsel (All Findings; All Recommendations)

Mendocino County District Attorney (All Findings; All Recommendations)

Mendocino County Tax Collector (Findings 1-4,6-7,9-11; Recommendations 1-13)

Mendocino County Clerk/Recorder (Findings 1,3,4,6,10-11; All Recommendations)

Mendocino County Building & Planning, Director (Findings 1-4,6-7,11;
Recommendations 1-13)

Mendocino County Department of Environmental Health, Director (Findings 1,4,6-7,11;
Recommendations 1-9, 11-14)

ORDINANCE NO. _____

ORDINANCE ADDING CHAPTER 9.32 OF TITLE 9 OF THE MENDOCINO COUNTY CODE ENTITLED MEDICAL MARIJUANA DISPENSING COLLECTIVE REGULATION

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

Chapter 9.32 of Title 9 of the Mendocino County Code is added to read as follows:

“MEDICAL MARIJUANA DISPENSING COLLECTIVE REGULATION

Section 9.32.010 Purpose and Intent

It is the purpose and intent of this Chapter to regulate the dispensing of medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino, by balancing the needs of medical patients and their caregivers to have safe access to medical marijuana, but who may be unable to cultivate medical marijuana, and the needs of neighbors and communities to be protected from public safety and nuisance impacts. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use or diversion of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California State law.

Section 9.32.020 Definitions

For the purpose of this Chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

As used herein the following definitions shall apply:

“Applicant” means a person who is required to file an application for a permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a medical marijuana dispensing collective.

“Attorney General guidelines” means Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the Attorney General in August 2008.

"Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

"Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

"Identification Card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

"Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Mendocino, or, if exempt from the permit requirements of the CBC, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" X 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gage, or similar products do not satisfy this requirement.

"Medical Marijuana Dispensing Collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written 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, store, and/or dispense marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775 and as conditioned herein. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

"Permittee" means the person to whom a medical marijuana dispensing collective permit is issued.

"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).

"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.

“Sheriff” or “Sheriff’s Office” shall mean the Sheriff’s Office of the County of Mendocino or the authorized representatives thereof.

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

“Zip-ties” means plastic ties with individualized numbers stamped on them, issued by the Mendocino County Sheriff’s Office for the purpose of identifying a legal marijuana plant.

Section 9.32.030 Permit Required from Sheriff’s Department

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the County of Mendocino, the operation of a medical marijuana dispensing collective unless the person first obtains and continues to maintain in full force and effect a medical marijuana dispensing collective use permit from the County as herein required.

Section 9.32.040 General Tax Liability

As a prerequisite to obtaining a permit, an operator of a dispensing collective shall be required to apply for and obtain a County Business License and tax certificate or exemption as required by the State Board of Equalization. Dispensing collective sales shall be subject to sales tax consistent with the requirements of the State Board of Equalization. All dispensaries shall submit to the County, on a quarterly basis, proof that said dispensing collective has paid all required taxes to the State Board of Equalization and the amount paid thereto.

Section 9.32.050 Applications

- (A) All applications for medical marijuana dispensing collective permits shall be filed with the Sheriff’s office. The application shall be made under penalty of perjury and shall include the following information:
- (B) All applications for medical marijuana dispensing collective permits shall be filed with the Sheriff’s Office. The application shall be made under penalty of perjury and shall include the following information:

(1) The name and address of each person applying for the permit and any other

person who will be engaged in the management of the collective;

(2) A unique identifying number from a State of California Driver's License or identification card for each person applying for the permit and any other person who will be engaged in the management of the collective;

(3) Written evidence that each person applying for the permit and any other person who will be engaged in the management of the collective is at least eighteen (18) years of age;

(4) That the applicant or any individual engaged in the management or employed by the collective has not been convicted of a violent felony as defined in Penal Code Section 667.5 (c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code Section 667.5 (c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*;

(5) A statement acknowledging that the permit applied for will be issued in conformance with the laws of the State of California and that such issuance does not confer upon the applicant, managers, employees and members of the collective immunity from prosecution under federal law;

(6) The applicant's waiver and release of the County from any and all legal liability related to or arising from the application for a permit or the enforcement of the conditions of the permit;

(7) The street address and/or parcel number of the location where the use is to take place;

(8) Whether cultivation of marijuana will occur on the premises, the number of plants which in no event shall exceed ninety-nine (99) and the measures that will be taken to minimize odor related complaints, or a statement explaining why such measures are not necessary;

(9) Whether use of medical marijuana will occur on the premises, and if so, measures that will be taken to assure responsible use;

(10) Acknowledgement that the California Fire Code includes a requirement, among others that may apply, that an establishment obtain a place of assembly permit if it will accommodate fifty (50) or more persons based on its square footage;

(11) Authorization from the applicant and all employees of applicant who will work at the dispensary, for the County, its agents and employees to seek

verification of the information contained in the application.

(12) A statement that the requested use will not violate the limitation locations set forth in Section 9.32.130;

(13) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft;

(14) A statement describing the proposed source of power for indoor cultivation, if any, (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site;

(15) If diesel generators are proposed to be used on site, a detailed description of the proposed methods of storage, delivery and containment of the diesel fuel must be included. This statement shall be referred to the Department of Environmental Health and the Air Quality Management District for a determination if additional conditions, permits or inspections shall be required;

(16) Authorization for the Sheriff or other appropriate County employees or agents to enter the property for the purpose of examining the location to confirm compliance with this section;

(17) If the applicant is organized as a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning ten percent (10%) or more of the stock of the corporation. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or Partnership Agreement shall be attached to the application;

(18) Submission of payment of a permit fee sufficient to cover the cost to all County departments of investigating and processing the application in an amount that shall be set by the Board of Supervisors in accordance with all applicable laws and regulations;

(19) A statement that upon receiving a completed permit application, the Sheriff shall refer the application to the Department of Planning and Building for a determination of the zoning, and notification to all neighbors and businesses within a three hundred (300) foot radius of the pending application;

(20) A statement that the Sheriff is hereby authorized to require in the permit application any other information reasonably related to the application including,

but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 9.32.060 Limitation on Number of Plants Located at a Dispensing Collective.

A dispensing collective shall maintain no more than ninety-nine (99) plants on the premises which may only be located indoors in up to one hundred (100) contiguous square feet.

Section 9.32.070 Zip Tie Requirement.

(A) If medical marijuana is cultivated to maturity at the location of the dispensing collective, zip ties shall be required to be securely attached to the base of individual flowering marijuana plants.

B. "Zip-Ties" shall be obtained through the Mendocino County Sheriff's Office. Dispensing Collectives shall purchase zip ties at the time a permit is issued for operation. The fee for the "zip-ties" shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws, regulations and the Master Fee Policy.

Section 9.32.080 Time Limit for Filing Applications.

All persons or companies who possess an outstanding business license heretofore issued for the operation of a business that dispenses medical marijuana must apply for a medical marijuana dispensing collective permit within ninety (90) days of the effective date of this ordinance. Continued operation of a medical marijuana dispensing collective without applying for a permit more than ninety (90) days after the effective date of this ordinance shall constitute a violation of this Chapter.

Section 9.32.090 Term of Permits and Renewals.

(A) Permits:

Medical marijuana dispensing collective permits issued under this Chapter shall expire one (1) year following their issuance. Medical marijuana dispensing collective permits shall be renewed by the Sheriff's office for additional one-year periods upon application by the permittee unless the permit is suspended or revoked subject to sections 9.32.110, 9.32.120, 9.32.130, and 9.32.140. Applications for renewal shall be made at least forty-five (45) days before the expiration date of the permit and shall be accompanied by the fee referenced in Section 9.32.110. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed.

(B) Renewal:

Medical marijuana dispensing collective permits must be renewed every year. Applications for one-year Administrative Review renewal of the Use Permit must be submitted to the Sheriff's office and shall be accompanied by the following minimum information:

- (1) The operator shall report the number of patients served and pay applicable fees, as required by this Chapter.
- (2) The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in dispensing collective operations to address issues or comply with laws.
- (3) The operator shall identify all current employees, volunteers or any other person who is involved in the operations of the dispensing collective.
- (4) The operator shall identify any problems encountered during operations and how they have been addressed.

Section 9.32.100 Fees

Every application for a medical marijuana dispensing collective use permit or renewal shall be accompanied by a fee, as established by resolution adopted by the Board of Supervisors from time to time. This application or renewal fee is in addition to fingerprinting, photographing, and background check costs and shall be in addition to any other permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the Board of Supervisors from time to time.

Section 9.32.110 Grounds for Denial of Permit

No permit shall be issued or renewed if the Sheriff finds:

- (1) That the applicant has provided materially false documents or testimony; or
- (2) That the applicant has not complied fully with the provisions of this Chapter; or
- (3) That the operation as proposed by the applicant, if permitted, would not have complied with all applicable laws, including, but not limited to, the Building, Planning, Housing, Fire, and Health Codes of the County, including the provisions of this Chapter and regulations issued by the Sheriff pursuant to this Chapter.

Section 9.32.120 Appeal from Denial of Permit or Renewal

The Sheriff's Office shall review all permit and renewal applications, and all other relevant information, and determine, based on current information, if the permit should be granted or renewed. If the Sheriff's Office determines that the permit should not be granted or renewed, the applicant may appeal such decision by filing a written notice with the Clerk of the Board of Supervisors within ten (10) days stating the grounds for the appeal. Such notice of appeal shall be accompanied by the payment of an appeal fee which shall be set by resolution of the Board of Supervisors in accordance with all applicable laws, regulations and the Master Fee Policy. If a notice of appeal is not filed and the required fee paid within the ten day appeal period, the decision of the Sheriff's Office shall be final.

Section 9.32.130 Location of Dispensing Collective

A dispensing collective shall be restricted to commercial zones and not be allowed in proximity to following:

- (1) Within one thousand (1,000) feet of any other medical marijuana dispensing collective, a youth-oriented facility, a school, park or any church as defined herein;
- (2) Within five hundred (500) feet of any occupied residential structure.

Section 9.32.140 Requirements for the Operation of a Dispensing Collective

All dispensing collectives shall comply with all of the following requirements:

- (1) Operate on a non-profit basis as set forth in Section B.1 of the Attorney General's guidelines;
- (2) Apply for and obtain a County business license;
- (3) Apply for and obtain a Board of Equalization Seller's Permit and collect and remit sales tax to the Board of Equalization if they intend to sell directly to qualified patients or primary caregivers;
- (4) Employ only persons who are at least 18 years of age;

- (5) Allow on the premises only persons who are at least 18 years of age or who are accompanied by their licensed attending physician, parent or documented legal guardian;
- (6) Follow the membership and verification guidelines as set forth in Section B.3 of the Attorney General's guidelines, except that wherever "should" appears it shall be replaced with "shall";
- (7) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this section;
- (8) Acquire, possess and dispense only lawfully cultivated marijuana as set forth in Section B.4 of the Attorney General's guidelines except that wherever "should" appears it shall be replaced with "shall";
- (9) Acquire, possess and dispense only medical marijuana that has been cultivated in the State of California;
- (10) Prohibit sales to non-members as set forth in Section B.5 of the Attorney General's guidelines;
- (11) Allow reimbursements and allocations of medical marijuana as set forth in Section B.6 of the Attorney General's guidelines;
- (12) Possess marijuana only in amounts consistent with the medical needs of the members of the collective; and only cultivate marijuana consistent with the limits granted pursuant to a permit issued in conformance with this section, but in no case more than ninety-nine (99) plants;
- (13) Secure all buildings where marijuana is cultivated or stored, sufficient to prevent unauthorized entry;
- (14) Purchase and attach a zip-tie to any flowering marijuana plant located on the dispensing collective premises;
- (15) Display the permit issued pursuant to this Chapter in a conspicuous place within the premises so that the permit may be readily seen by individuals entering the premises;
- (16) Operate from a building or portion of a building which shall be directly accessible from the public right of way and which shall be located in a commercial zone;
- (17) Maintain no more than ninety-nine (99) marijuana plants, which may only be

located indoors, in up to one hundred (100) contiguous square feet;

(18) Prohibit the use of marijuana within the public right of way within one hundred (100) feet of a building or portion of a building where the collective is located and post a sign near all entrances and exits providing notice of this policy and a statement that any person violating this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be subject to a fine of one hundred dollars (\$100.00);

(19) Exterior signage shall be limited to the address, hours of operation, and the name of the collective and may not contain the words marijuana, cannabis, dispensary or anything else that advertises the presence of marijuana;

(20) Limit hours of operation to between 7:00 a.m. and 9:00 p.m.;

(21) Dispense only those amounts of marijuana that are consistent with the medical needs of the patient or patients upon whose behalf it is obtained;

(22) Dispense only inside the premises, however, delivery to collective members is allowed if the employee making the delivery is also a collective member;

(23) Cultivated or processed marijuana shall not be visible from the building exterior;

(24) Alcoholic beverages shall not be sold or consumed on the premises or in the public right of way within one hundred (100) feet of the premises during the hours of operation.

Section 9.32.150 Violation of Ordinance

Violation of any provision of this ordinance is hereby deemed to be a public nuisance.

Section 9.32.160 Enforcement

- (A) The County may abate the violation of this Chapter by the prosecution of a civil action, including an action for injunctive relief. 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 as set forth in Sections 9.32.170 through 9.32.350 beginning with the issuance of a Notice and Order to Abate.

Section 9.32.170 Service of Notice and Order To Abate

The Notice and Order to Abate shall be served in the following manner:

- (A) By certified mail, addressed to the owner, his or her agent, at the address shown on the last equalized assessment roll or as otherwise known. Service shall be deemed to have been completed upon the deposit of said Notice and Order, postage prepaid, in the United States mail; **and**
- (B) By certified mail addressed to anyone known to the Enforcement Officer to be in possession of the property at the street address of the property being possessed. Service shall be deemed to have been completed upon the deposit of said Notice and Order, postage prepaid, in the United States mail; **and**
- (C) By posting such Notice and Order to Abate conspicuously in front of the property on which, or in front of which, the nuisance exists, or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property.

Section 9.32.180 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, as imposed by the Enforcement Officer:

1. No less than twenty-five dollars (\$25.00) per day and no more than one hundred dollars (\$100.00) per day for the first violation; no less than one hundred dollars (\$100.00) per day and no more than two hundred dollars (\$200.00) per day for a second violation of the same ordinance within one (1) year; and no less than two hundred dollars (\$200.00) and no more than five hundred dollars (\$500.00) per day for each

additional violation of the same ordinance within one (1) year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.

2. The Enforcement Officer shall have the sole and exclusive discretion to set the amount of civil penalties within the ranges set forth in this section. The Enforcement Officer shall not impose a penalty greater than the minimum amount in range of civil penalties set forth in this section, unless the Enforcement Officer's department has established a written policy setting forth how civil penalties within the ranges are determined. Such policy shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of penalty to be imposed by this section.
3. If the penalty is imposed for violation of any violation of this ordinance, there shall be imposed a fine of \$250.00, plus the actual costs of abatement.
4. At the discretion of the Enforcement Officer, or his or her designee, or upon the appeal of the property owner, the determination may be referred to a Hearing Officer of the County, duly appointed to hear such matters as described in Sections 9.32.190, 9.32.200, 9.32.210, and 9.32.220. The determination of the Hearing Officer as to the amount of charges properly imposed under this section shall be final, subject only to judicial review.
5. The charges imposed by this section shall not apply 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,

as determined solely by the Enforcement Officer, to meet the requirements of this code.

6. In the event a property owner, in the opinion of the relevant Department Head(s), abates the nuisance in a timely manner after the Notice and Order to Abate has been issued, the relevant Department Head(s) has (have) the authority to waive or reduce the amount of penalties owed, if in his or her opinion such a reduction is warranted.

Section 9.32.190 Hearing Officer

Pursuant to Government Code Section 25845(i), the Chief Executive Officer shall contract with at least three (3) individuals as defined in Government Code Section 27720 et seq. to act as Hearing Officers on a rotating basis for the appeals described in this Chapter. The Hearing Officer shall have all powers and authorities described in Government Code Section 25845. In lieu of a Hearing Officer, the Board of Supervisors at any time may exercise the option to appoint a Hearing Board which shall consist of three persons, appointed by the Board of Supervisors, who shall receive compensation for attendance at hearings at a rate fixed by the Board of Supervisors. A quorum for the Hearing Board to meet shall be two members. Concurrence of two members shall be required for decisions of the Hearing Board.

Section 9.32.200 Appeal Procedure

Any owner or other person in possession of the property may appeal a Notice and Order to Abate to a person designated as a Hearing Officer or Hearing Board except in cases regarding Animal Control issues which shall be appealed to the Animal Care and Control Advisory Board. The appeal shall be submitted in writing, specify the grounds upon which the appeal is taken, contain the name, address and telephone number of the appellant, be accompanied by the payment of an appeal fee in an amount established by Resolution by the Board of Supervisors and be filed with the Department specified on the Notice and Order to Abate within ten (10) calendar days of the issuance of the Notice and Order to Abate. Timely appeal shall stay any further abatement action until the hearing is conducted. In accordance with the noticing provisions set forth in Section 9.32.170 the Hearing Officer shall notify the parties in writing of the date and location of the hearing, at least ten (10) days prior to said date.

Section 9.32.210 Hearing Procedures

- (A) Pursuant to Government Code Section 25170, the Hearing Officer or Hearing Board may issue subpoenas as necessary to require the attendance at the hearing of

persons or the production of books, papers or other things related to the subject matter of the hearing.

- (B) The Enforcement Officer with jurisdiction to cause the abatement of the alleged nuisance shall first describe the acts or conditions constituting a nuisance and shall respond specifically to the grounds set out in the demand for hearing. Thereafter, the objector shall present whatever evidence is relevant to refute the allegation.
- (C) Formal rules of evidence or procedure in any proceeding subject to this Chapter shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Any failure to make a timely objection to offered evidence constitutes a waiver of the objection.
- (D) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified an interpreter by either the State of California or the County of Mendocino.
- (E) Hearings shall take place at the earliest practical date following the notice of appeal. The failure of the appellant to appear shall not prevent the hearing from proceeding providing proper notice has been given in accordance with this Chapter. The hearing may only be continued upon request of a party to the hearing and upon a showing of good cause but in no event shall there be more than one continuance allowed.

Section 9.32.220 Determination

- (A) At the conclusion of the hearing, the Hearing Officer or Hearing Board shall determine, based on the evidence before it:
 - 1. Whether the acts or conditions specified in the Notice of Abatement exist;
 - 2. Whether those acts or conditions constitute a nuisance;
 - 3. If a nuisance is determined to exist, whether it should be abated by the County; and
 - 4. The appropriateness of the penalty imposed.

- (B) If the Hearing Officer or Hearing Board finds that the alleged nuisance does exist and should be abated, abatement of the nuisance shall be ordered. An Order of Abatement is final immediately, unless the order or a provision of this code expressly provides otherwise.

Section 9.32.230 Abatement By Owner Or County

- (A) A copy of the written decision and Order of Abatement shall be served personally or by mail upon each objector and all other persons upon whom the Notice and Order to Abate was served. The order may direct that any occupancy, use or activity cease immediately if its existence or continuation is found to be an immediate threat to health or safety. Otherwise, abatement shall be commenced by the owner within five (5) calendar days of the service of the decision and Order, or any longer period provided in the order, and shall continue with reasonable diligence until complete. Reasonable diligence shall be determined by the Enforcement Officer.
- (B) Upon the failure, neglect, or refusal to properly comply with the Order of Abatement issued by the Hearing Officer or Hearing Board within the prescribed time period, the Enforcement Officer authorized to enforce the ordinance or other designated County employee may cause to be done whatever work is necessary to abate the public nuisance. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.
- (C) When the County has completed the work of abatement, or has paid for such work, the actual cost thereof, together with an administrative cost, including reasonable attorneys' fees as set forth in Section 9.32.240 and 9.32.320 and all fines shall be charged to the owner of the property. The combined amounts shall be included in a bill and sent by mail to the owner, or his or her agent for payment, if not paid prior thereto. The bill shall apprise the owner that failure to pay the bill within fifteen (15) days from the date of mailing, may result in a lien upon the property.

Section 9.32.240 Failure of Owner to Abate or Appeal

If, within ninety (90) days from the issuance of the Notice and Order to Abate, the property owner has not filed a timely appeal in accordance with Section 9.32.200, or has failed to pay any outstanding fines or penalties, the amount of the

penalties as established pursuant to Section 9.32.180 for the 90-day period shall be totaled and the same shall be considered due and owing. Notice of the amount of penalties shall be mailed to the property owner by certified mail, addressed to the owner, his or her agent, at the address shown on the last equalized assessment roll or as otherwise known. Any continuing violation after the aforesaid 90-day period shall be considered a subsequent offense and the penalty for such new violation shall be the basis for a second or third violation and the procedures set forth in this Chapter shall be followed as if the violation was a new violation. Nothing in this Section shall be interpreted to extend the time given to the property owner to abate the nuisance as set forth in the Notice and Order to Abate. Nothing in this Section shall be interpreted as limiting the Enforcement Officer's discretion to abate the nuisance at the County's expense and to seek reimbursement from the property owner or responsible party for all costs associated with the abatement.

Section 9.32.250 Summary Abatement

Notwithstanding any other provision of this Chapter, when any unlawful marijuana distribution constitutes an immediate threat to the public health or safety, and with the procedures set forth in Section 9.32.170 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 9.32.170 but the formal notice and hearing procedures set forth in this Chapter shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in sections 9.32.240 and 9.32.320.

Section 9.32.260 No Duty to Enforce

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Mendocino 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.

Section 9.32.270 Report and Notice of Lien Hearing

The Board of Supervisors delegates the responsibility to conduct a lien hearing in conformance with this Chapter to a Hearing Officer.

If the bill for the cost of the abatement, administrative costs, attorney fees, and all fines imposed pursuant to Sections 9.32.180, 9.32.240 or 9.32.320 are not paid

within thirty (30) days of issuance of an order pursuant to Section 9.32.220 or the date of mailing of the notice described in Section 9.32.160, the Enforcement Officer authorized to enforce the ordinance shall render an itemized report in writing to the Clerk of the Board for submittal to the Hearing Officer listing the costs of abatement, administrative fee, attorney fees and all fines and/or fees. The Hearing Officer may then order for a lien hearing and confirmation. Names and addresses of persons having any record interest in the property shall be attached to the report. At least ten (10) days prior to said hearing, the Hearing Officer through the Clerk of the Board shall give notice, by certified mail, of said hearing to the record owner of each assessor's parcel involved in the abatement, the holder of any mortgage or deed or trust of record, if known, and any other person known to have a legal interest in the property. Said notice shall describe the property by street number or some other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien.

Section 9.32.280 Hearing on Account and Proposed Lien

At the time and place fixed in the notice, the Hearing Officer will hear and consider the account and proposed lien amount, together with objections and protests thereto. At the conclusion of the hearing, the Hearing Officer may make such modifications and revisions of the proposed account and lien amount as it deems just, and may order the account and proposed lien amount confirmed or denied, in whole or in part, or as modified and revised. The determination of the Hearing Officer as to all matters contained therein is final and conclusive.

Section 9.32.290 Notice of Lien

Upon confirmation of a lien by the Hearing Officer, the Enforcement Officer shall notify the owners by certified mail, return receipt requested, of the amount of the pending lien confirmed by the Hearing Officer and advise them that they may pay the account in full within thirty (30) days to the Enforcement Officer in order to avoid the lien being recorded against the property. If the lien amount is not paid by the date stated in the letter, the Enforcement Officer shall prepare and have recorded in the office of the County Recorder of Mendocino County a notice of lien. The notice shall contain:

- (A) A legal description, address and/or other description sufficient to identify the premises;
- (B) A description of the proceeding under which the lien was made, including the order of the Hearing Officer confirming the lien;
- (C) The amount of the lien;

- (D) A claim of lien upon the described premises.

Section 9.32.300 Lien

Upon the recordation of a Notice of Lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at parity with the liens of State and County taxes.

Section 9.32.310 Collection With Ordinary Taxes

After recordation, the Notice of Lien shall be delivered to the County Auditor, who will enter the amount of the lien on the assessment roll as a lien. Thereafter, the amount set forth shall be collected at the same time and in the same manner as ordinary County taxes, and is subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as are provided for ordinary County taxes; all laws applicable to the levy, collection and enforcement of County taxes are hereby made applicable to such lien.

Section 9.32.320 Attorneys' Fees

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Chapter exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Section 9.32.330 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 section shall be made available to the Department responsible for the enforcement action for training and further code enforcement actions.

Section 9.32.340 Violations

It shall be unlawful for any person to refuse to allow any duly authorized officer, employee, agent, or contractor of the County to enter upon any premises for the purposes of abating the public nuisance as authorized herein or to interfere in any manner whatever with such officer, employee, agent, or contractor. The Board of Supervisors adopts and incorporates herein by reference provisions set forth in Government Code Section 25845.5.

Section 9.32.350 Compliance With 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 not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Section 9.32.360 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, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 9.32.370 Effective Date

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 passage.”

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2009, by the following roll call vote:

AYES:
NOES:

ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted

and **SO ORDERED**.

CHAIR, Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of Said Board

By: _____

APPROVED AS TO FORM:

JEANINE B. NADEL, County Counsel
