

1  
2  
3 AN ORDINANCE OF THE COUNTY OF BUTTE ADDING ARTICLE I, ENTITLED  
4 "MARIJUANA DISPENSARIES,"  
5 OF CHAPTER 34B, ENTITLED "MARIJUANA DISPENSARIES," OF THE BUTTE  
6 COUNTY CODE

7 The Board of Supervisors of the County of Butte ordains as  
8 follows:

9 Section 1. Chapter 34B is added to the Butte County Code as  
10 follows:

11 **CHAPTER 34B MARIJUANA DISPENSARIES REGULATION**

12  
13 **34B-1 Authority and Title.** Pursuant to the authority granted  
14 by Article XI, section 7 of the California Constitution, Health  
15 and Safety Code sections 11362.83 and 11362.768, and Government  
16 Code section 65800 et seq., the Board of Supervisors does enact  
17 this Ordinance, which shall be known and may be cited as the  
18 "Butte County Marijuana Dispensary Ordinance."

19 **34B-2 Findings and Purpose.** The Board of Supervisors of the  
20 County of Butte hereby finds and declares the following:

21 (a) In 1996, the voters of the State of California approved  
22 Proposition 215 (codified as California Health and Safety Code  
23 section 11362.5, and entitled "The Compassionate Use Act of  
24 1996").

1 (b) The intent of Proposition 215 was to enable persons who  
2 are in need of marijuana for medical purposes to use it without  
3 fear of criminal prosecution under limited, specified  
4 circumstances. The Proposition further provides that "nothing  
5 in this section shall be construed to supersede legislation  
6 prohibiting persons from engaging in conduct that endangers  
7 others, or to condone the diversion of marijuana for non-medical  
8 purposes."

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

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

1 distribution, dispensation, or possession of marijuana for  
2 medical purposes.

3 (e) Proposition 215 and Senate Bill 420 primarily address  
4 criminal law, providing qualifying patients and primary  
5 caregivers with limited immunity from state criminal prosecution  
6 under certain identified statutes. Neither Proposition 215 nor  
7 Senate Bill 420, nor the Attorney General's August 2008  
8 *Guidelines for the Security and Non-Diversion of Marijuana Grown*  
9 *for Medical Use* adopted pursuant to Senate Bill 420, provides  
10 comprehensive land use regulation of facilities and premises at  
11 which marijuana is dispensed.

12 (f) Operating dispensaries in Butte County have contributed to a  
13 higher concentration of marijuana in the area, as some persons  
14 grow and process marijuana specifically with the intent to  
15 provide the marijuana to dispensaries. Further, law enforcement  
16 has made an arrest in an alleged attempted murder of a  
17 dispensary operator. Organized crime has arrived in the County  
18 with the intention of establishing a marijuana dispensary and  
19 eliminating competition. Organized crime members have committed  
20 home invasion robberies to steal marijuana for sale in a  
21 marijuana dispensary. The County has experienced a significant  
22 increase in arrests for marijuana-related crime and specifically  
23 in arrests of juveniles for marijuana-related crime.

24 (g) Proposition 215 and Senate Bill 420 do not preempt local  
25 zoning or nuisance regulations affecting marijuana-related land

1 uses; rather, Health and Safety Code Section 11362.83 was  
2 recently amended to provide that local agencies may (1) enact  
3 ordinances that regulate the location, operation or  
4 establishment of a medical marijuana cooperative or collective,  
5 (2) may enforce such local ordinances civilly and criminally and  
6 (3) enact other laws consistent with the article. Local  
7 regulatory authority over such land uses has been recognized and  
8 affirmed in such cases as *City of Claremont v. Kruse* (2009) 177  
9 Cal.App.4<sup>th</sup> 1153, *County of Los Angeles v. Hill* (2011) 192  
10 Cal.App.4<sup>th</sup> 861 and *Qualified Patients Assoc. v. City of Anaheim*  
11 (07CC09524).

12 (h) The Board of Supervisors hereby finds that marijuana  
13 dispensaries are not substantially similar to other permitted,  
14 conditional or accessory uses in any zone in the County and  
15 therefore are prohibited in any zone consistent with Section 24-  
16 65 of the Butte County Code. The Board of Supervisors further  
17 finds that marijuana dispensaries previously established in this  
18 County are unlawful and a public nuisance, and may be abated,  
19 eliminated or enjoined as provided by the Butte County Code or  
20 state law.

21 (i) Nothing in this Ordinance shall be construed to allow the  
22 use of marijuana for non-medical purposes, or allow any activity  
23 relating to the cultivation, distribution or consumption of  
24 marijuana that is otherwise illegal under State or federal law.  
25 No provision of this Ordinance shall be deemed a defense or

1 immunity to any action brought against any person by the Butte  
2 County District Attorney, the Attorney General of State of  
3 California, or the United States of America.

4 **34B-3 Definitions.**

5 Except where the context clearly indicates otherwise, the  
6 following definitions shall govern the construction of the words  
7 and phrases used in this Ordinance:

8 (a) "Facility" includes any facility, building, structure,  
9 premises, storefront, or location, whether fixed or mobile,  
10 permanent or temporary, and any delivery service.

11 (b) "Marijuana Dispensary" means any facility meeting any or all  
12 of the following criteria:

13 (1) A facility where marijuana is made available for medical  
14 purposes pursuant to Health and Safety Code sections 11362.5  
15 and/or 11362.7 et seq. or otherwise; provided, however, that a  
16 "Marijuana Dispensary" shall not include the following  
17 facilities pursuant to the following provisions of Division 2 of  
18 the Health and Safety Code:

19 a clinic licensed pursuant to Chapter 1; a health care facility  
20 licensed pursuant to Chapter 2; a residential care facility for  
21 persons with chronic life-threatening illness licensed pursuant  
22 to Chapter 3.01; a residential care facility for the elderly  
23 licensed pursuant to Chapter 3.2; or a home health agency  
24 licensed pursuant to Chapter 8, as long as any such use complied  
25 strictly with applicable law, including, but not limited to,

1 Health & Safety Code Sections 11362.5 et seq. and 11362.7 et  
2 seq. and the Butte County Zoning Ordinance (Chapter 24 of the  
3 Butte County Code).

4 "Marijuana Dispensary" includes any medical marijuana collective  
5 or cooperative that meets any or all of the foregoing criteria.

6 This Ordinance shall in no way limit the right to possess, use  
7 or cultivate marijuana for medicinal purposes as is presently  
8 authorized by the laws of the State of California as set forth  
9 in the Health and Safety Code.

10 **34B-4 Prohibition of Marijuana Dispensaries.** Notwithstanding  
11 any other provision of this Code, the establishment,  
12 development, construction, maintenance, or operation of a  
13 Marijuana Dispensary is hereby prohibited, and is not a  
14 permitted or conditionally permitted use in any zoning district,  
15 even if located within an otherwise permitted use. No person  
16 shall establish, develop, construct, maintain, or operate a  
17 Marijuana Dispensary, and no application for a building permit,  
18 use permit, variance, or any other entitlement authorizing the  
19 establishment, development, construction, maintenance, or  
20 operation of any Marijuana Dispensary shall be approved by the  
21 County of Butte or any officer or employee thereof.

22 **34B-5 Enforcement.** When a person violates any provision of  
23 this Ordinance, the County may use any and all remedies  
24 available to it, including those set out in Butte County Code  
25 Chapter 1 (General Provisions), Chapter 41 (Code Enforcement

1 Policies and Procedures), Chapter 24 (Zoning), Chapter 32A  
2 (Property Maintenance and Abatement of Nuisances) and all other  
3 applicable sections of the Butte County Code.

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

18 Section 3. If any provision of this Ordinance or the  
19 application thereof to any person or circumstances is for any  
20 reason held to be invalid by a court of competent jurisdiction,  
21 such provisions shall be deemed severable, and the invalidity  
22 thereof shall not affect the remaining provisions or other  
23 applications of the Ordinance which can be given effect without  
24 the invalid provision or application thereof.

25

1 Section 4. This Ordinance shall take effect thirty (30) days  
2 after the date of its passage. The Clerk of the Board of  
3 Supervisors is authorized and directed to publish this ordinance  
4 before the expiration of fifteen (15) days after its passage.  
5 This Ordinance shall be published once, with the names of the  
6 members of the Board of Supervisors voting for and against it,  
7 in the Chico Enterprise Record, a newspaper of general  
8 circulation published in the County of Butte, State of  
9 California."

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 PASSED AND ADOPTED by the Board of Supervisors of the County of  
2 Butte, State of California, on the \_\_\_\_ day of \_\_\_\_ 2011, by  
3 the following vote:

4  
5 AYES:

6 NOES:

7 ABSENT:

8 NOT VOTING:

9

10

\_\_\_\_\_  
STEVE LAMBERT, Chair of the  
Butte County Board of Supervisors

11

12 ATTEST:

13 Paul Hahn,  
14 Chief Administrative Officer and  
15 Clerk of the Board

16

17

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

18

19

20

21

22

23

24

25