



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

For the meeting of: December 13, 2011

Date: November 23, 2011

To: Board of Supervisors

From: *J.L. Lazar for*
Kirk Girard, Director of Community Development Services

Subject: **Zoning Ordinance Revisions – Medical Marijuana Uses**
Case No.: OR-11-01 Applies Countywide

RECOMMENDATIONS:

That the Board of Supervisors:

1. Introduce the Ordinance No. ____ by title and waive further reading [Attachment A]
2. Open the public hearing, receive and consider the staff report and proposed determination of exempt status under CEQA, and accept public comment.
3. Close the Public Hearing.
4. Deliberate on the Ordinance.
5. Adopt Resolution No. ____ [Attachment D] approving the proposed Zoning Ordinance changes. Approval of the proposed changes to Chapter 4 of the Zoning Regulations (Outside the Coastal Zone) will become effective 30 days from the date of its passage. Approval of the proposed changes to Chapter 3 (Inside the Coastal Zone) will become effective upon certification by the Coastal Commission. (The resolution also directs staff to submit the proposed amendments to the California Coastal Commission for certification.)

(Recommendations continued next page)

Prepared by *SL*
Steven Lazar, Planner I

CAO Approval *Philip Smith Hayes*

REVIEW:	Auditor _____	County Counsel <u><i>JS</i></u>	Personnel _____	Risk Manager _____	Other _____
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TYPE OF ITEM:

____ Consent

____ Departmental

Public Hearing

____ Other _____

PREVIOUS ACTION/REFERRAL:

Agenda Order No. L-1

Meeting of: November 15, 2011

Agenda Order No. F-2 Meeting of: July 12, 2011

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor

Seconded by Supervisor

And unanimously carried by those members present.

The Board hereby adopts the recommended action contained in this report.

Dated: _____

Kathy Hayes, Clerk of the Board

By: _____

Recommendations (continued)

6. Adopt Ordinance No. ____ adding sections 313-55.1 and 314-55.1 to Title III of the Humboldt County Code relating to the regulation of indoor cultivation of medical marijuana within a residence.
7. Direct Community Development Services - Planning Division to transmit the Local Coastal Program Amendment to the California Coastal Commission for certification in accordance with the Coastal Act.
8. Direct Community Development Services – Planning Division to file a Notice of Exemption with the County Clerk and Office of Planning and Research pursuant to California Environmental Quality Act.
9. Direct the Clerk of the Board to publish a Summary of the Ordinance within 15-days after adoption of the ordinance by the Board, along with the names of those Supervisors voting for and against the ordinance [Attachment E] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance.
10. Direct the Clerk of the Board to record in the minutes of the Board meeting that the ordinance has been duly published and posted, and to give notice of the decision to any interested parties.

SOURCE OF FUNDING:

General Fund contribution to the Current Planning Division.

DISCUSSION:

Summary

This item involves additional consideration of amendments to the Zoning Regulations (referred to as the Medical Cannabis Land Use Ordinance or MMLUO) that would govern the indoor cultivation of medical marijuana for personal use by qualified patients. Following direction received from the Board of Supervisors at the November 15th meeting, County Counsel's office and the Community Development Services Department have made revisions to the draft ordinance confining its scope to regulation of indoor personal-use cultivation within single-family residences and detached accessory structures. All previous Ordinance content addressing regulation of Collective or Cooperative Dispensing Facilities (CCDF) has been eliminated from the current draft. In association with this request, County Counsel staff has prepared a draft urgency ordinance which would apply a 45-day moratorium on the processing and intake of Conditional Use permit applications for CCDF. The urgency ordinance is further discussed in a separate staff report and will be presented for consideration as a separate Agenda Item at the December 13th meeting.

Alternatives

Staff has prepared 3 alternatives for the Boards consideration.

Alternative 1: Adopt the ordinance as revised, keeping indoor cultivation limited to 50 ft.²

To minimize the risk of adverse land use impacts and provide the safest harbor from scrutiny or challenge associated with the Pack decision, both staff and County Counsel continue to recommend that the Board limit indoor personal-use cultivation allowances to 50 ft.² or less. This will maintain consistency with sister jurisdictions principally permitted standards and keep cultivation levels at a scale that is appropriate for residences and residential neighborhoods. The Alternative 1 Draft Ordinance is included as Attachment A.

Alternative 2: Increase baseline personal use cultivation allowances from 50 ft.² to 100 ft.² with no supplemental performance standards.

Both Staff and Counsel believe the next safest approach would be an increase in the principally permitted cultivation allowance from 50 ft² to 100 ft². Increasing the principally permitted cultivation allowance avoids conflicts with the Pack decision associated with a "permit scheme" and achieves the objective of providing an opportunity for increased cultivation. The Alternative 2 Draft Ordinance is included as Attachment B.

Alternative 3: Provide for up to 100 ft.² of cultivation if supplemental performance standards are met

Alternative 3 would establish a two-tiered performance standard approach. The first tier would apply to cultivation up to 50 ft² and include the performance standards already recommended in the Alternative 1 ordinance. The second tier would allow an increase to 100 ft² if the cultivation is in compliance with supplemental performance standards. Possible supplemental performance standards would address the increased electrical load, increased potential for odor and increased potential for damage to residential structures associated with larger cultivation areas. Alternative 3 could be incorporated into the existing ordinance with the addition of this language to Section 55.1.8:

19. A total of one-hundred (100) square feet of indoor medical marijuana cultivation may occur for personal use, which does not exceed ten (10) feet in height, for each residence on a parcel provided the requirements of Sections 314-55.1.8.1 through 314-55.1.8.18 and the following supplemental standards are met:

- (a) Electrical Requirements: The room or area in which cultivation occurs must be served by more than one circuit rated for at least 15 amps. Any electrical augmentation or modifications must be installed by the owner or a licensed electrician under a valid building permit.
- (b) Setbacks: Structures hosting personal use cultivation in excess of 50 ft.² but less than 100 ft.² must be located at least 50 feet from the nearest property line.
- (c) Minimum Parcel Size: Cultivation in excess of 50 ft.² but less than 100 ft.² may only occur on parcels over 1 acre in size.
- (d) Interior Improvements to Cultivation Area: Cultivation area must be constructed with a one hour firewall assembly of green board.

These standards may be modified to be more or less stringent as your Board feels is appropriate.

Alternative 3 may present an increased risk of conflict with the Pack decision. A two-tiered performance standard approach, while not a “permit scheme,” could be argued to be a granting of an entitlement for an activity that is prohibited under federal law. While the same argument can be made for a single-tier performance standard approach, the argument is stronger with the addition of multiple tiers. Future court decisions could go beyond the Pack decision striking down “permit schemes” and apply more broadly to any form of a grant of entitlement by a local jurisdiction for cultivation, including the grant of entitlement based on conformance with performance standards. Of course, your Board could modify whatever ordinance you adopt as case law evolves. The Alternative 3 Draft Ordinance is included as Attachment C.

In addition to the modifications made to the draft ordinance to reflect the three Board alternatives, staff made suggested modifications common to all three alternatives. The modifications reflect specific Board direction or are now being suggested by staff based on testimony received at the hearing. The following table is a summary of revisions common to all alternatives made to the Draft MMLUO.

Summary of Revisions Common to All Alternatives:	
Code Section	Revision (deletions shown in strikeout text / new text is <u>underlined</u>)
Elimination of CCDF provisions and policy 55.1.20 and throughout	All references to CCDF and their regulation have been deleted from the current draft of the Ordinance.
Requirement that ventilation modifications be	55.1.8 <u>Indoor Residential Cultivation for Personal Use</u> The County shall not interfere with an individual qualified patient’s indoor residential cultivation of medical marijuana for that patient’s personal use in the inland zones, so

<p>easily reversible.</p> <p>55.1.8.9</p>	<p>long as the cultivation is in conformance with this Code and state law.</p> <p>In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:</p> <p>9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. <u>Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses;</u> and</p>
<p>Waterproof membrane requirement</p> <p>55.1.8.18</p>	<p>18. <u>A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.</u></p>
<p>References to Testing facilities have been deleted</p> <p>55.1.21</p>	<p>55.1.20 <u>Medical Marijuana Research Laboratories and Testing Facilities</u></p> <p>Medical marijuana research laboratories and testing facilities are not permitted in any zone.</p>
<p>References to business offices have been deleted</p> <p>55.1.22</p>	<p>55.1.21 <u>Medical Marijuana Business Offices</u></p> <p>Business offices for a medical marijuana CCDF at which no cultivation, processing, storage, handling, or distribution of marijuana in any form occurs shall be allowed in any zone in which business offices are allowed. Medical marijuana business offices shall be subject to all the regulations and standards applicable to business offices in the Humboldt County Code</p>

CEQA Compliance

Amending the text of the Humboldt County Zoning Regulations is a "project" for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061(b)(3), there is a 'general rule' that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The proposed MMLUO alternatives presented to your Board will not increase residential or commercial use impacts to the environment above those considered in previous General Plan and Land Use Ordinance Environmental Impact Reports (EIRs). Given this, staff continues to believe the use of the General Rule exception is appropriate.

Staff Recommendation

Staff recommends that your Board adopt the ordinance presented under Alternative 1 which limits indoor personal use cultivation allowances to fifty (50) square feet.

FINANCIAL IMPACT:

The cost of preparing the proposed MMLUO is being paid by the General Fund contribution to the Current Planning Division. Supplemental revenue for this cost was not provided in the Division's FY 2011-2012 budget so funds are being diverted for this project from other General Fund activities of the Division. One of the unfortunate affects of the Pack decision was the elimination of the potential for receiving revenue through permit fees for medical marijuana activity. Without permit fee revenue, the County's involvement in marijuana regulation is unfunded and demands supplemental or re-direction of General Fund revenue or reallocation of revenue from other sources. Compliance costs to enforce adopted regulations will be paid by a combination of the General Fund and penalty revenue depending upon the circumstances of a given violation and its abatement.

OTHER AGENCY INVOLVEMENT:

County Departments involved in the development of the MMLUO include County Administrative Office, County Counsel, District Attorney, Health and Human Services, Sheriff's Department and Agricultural Commissioner. Staff has also worked with staff from the cities of Arcata, Eureka and Blue Lake.

ATTACHMENTS:

Attachment A: *Draft Ordinance implementing **Alternative 1:*** Ordinance No. ____; Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations (Chapter 3 of Division 1 of Title III of the Humboldt County Code) [**Pg. 7**]

Alternative 1 Amendments to the Coastal Zoning Regulations [**Pg. 9**]

Alternative 1 Amendments to the Inland Zoning Regulations [**Pg. 16**]

Attachment B: *Draft Ordinance implementing **Alternative 2:*** Ordinance No. ____; Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations (Chapter 3 of Division 1 of Title III of the Humboldt County Code) [**Pg. 23**]

Alternative 2 Amendments to the Coastal Zoning Regulations [**Pg. 25**]

Alternative 2 Amendments to the Inland Zoning Regulations [**Pg. 32**]

Attachment C: *Draft Ordinance implementing **Alternative 3:*** Ordinance No. ____; Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations (Chapter 3 of Division 1 of Title III of the Humboldt County Code) [**Pg. 39**]

Alternative 3 Amendments to the Coastal Zoning Regulations [**Pg. 41**]

Alternative 3 Amendments to the Inland Zoning Regulations [**Pg. 49**]

Attachment D: Resolution No. ____ [**Pg. 57**]

Attachment E: Post-Adoption Summary of Ordinance [**Pg. 60**]

Attachment F: Findings for Adoption of Zoning Text Amendments [**Pg. 62**]

ATTACHMENT A

Alternative 1

Ordinance No. _____

Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations
(Chapter 3 of Division 1 of Title III of the Humboldt County Code)

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT ADDING SECTION 313-55.1 AND SECTION 314-55.1 TO THE HUMBOLDT COUNTY ZONING CODE, RELATING TO THE REGULATION OF INDOOR MEDICAL MARIJUANA CULTIVATION WITHIN A RESIDENCE.

The Board of Supervisors of the County of Humboldt do ordain as follows:

- SECTION 1. Section 313-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 2. Section 314-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 3. Amendments to 314-55.1 (Regulations Outside the Coastal Zone) shall take effect and be in force thirty (30) days from the date of its passage. Amendments to 313-55.1 (Regulations Inside the Coastal Zone) shall take effect immediately upon certification of the proposed amendments to the local coastal program. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published at least once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 20__.

AYES: Supervisors –
 NOES: Supervisors –
 ABSENT: Supervisors –

 Chair of the Board of Supervisors of the
 County of Humboldt, State of California

(SEAL)

ATTEST:
 Kathy Hayes
 Clerk of the Board of Supervisors
 County of Humboldt, State of California

 Kathy Hayes

313-55.1 MEDICAL MARIJUANA LAND USES: COASTAL

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes

are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. Therefore, the indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
16. The County further finds that the indoor cultivation of fifty (50) square feet or less of medical marijuana that is ten (10) feet tall or less per residence or detached accessory

building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

1. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
2. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.
3. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
4. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof 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.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of fifty (50) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total; and
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping

the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and

10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.
18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

314-55.1 MEDICAL MARIJUANA LAND USES: INLAND

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes

are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. The indoor cultivation of more than fifty (50) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
16. The County further finds that the indoor cultivation of fifty (50) square feet or less of medical marijuana that is ten (10) feet tall or less per residence or detached accessory

building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

1. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
2. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or any other applicable state or federal laws.
3. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
4. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof 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.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of fifty (50) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with an individual qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the inland zones, so long as the cultivation is in conformance with this Code and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total; and
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana

shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and

10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.
18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

ATTACHMENT B

Alternative 2

Ordinance No. _____

Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations
(Chapter 3 of Division 1 of Title III of the Humboldt County Code)

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

ORDINANCE NO. ____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT ADDING SECTION 313-55.1 AND SECTION 314-55.1 TO THE HUMBOLDT COUNTY ZONING CODE, RELATING TO THE REGULATION OF INDOOR MEDICAL MARIJUANA CULTIVATION WITHIN A RESIDENCE.

The Board of Supervisors of the County of Humboldt do ordain as follows:

- SECTION 1. Section 313-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 2. Section 314-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 3. Amendments to 314-55.1 (Regulations Outside the Coastal Zone) shall take effect and be in force thirty (30) days from the date of its passage. Amendments to 313-55.1 (Regulations Inside the Coastal Zone) shall take effect immediately upon certification of the proposed amendments to the local coastal program. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published at least once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 20__.

AYES: Supervisors –
 NOES: Supervisors –
 ABSENT: Supervisors –

 Chair of the Board of Supervisors of the
 County of Humboldt, State of California

(SEAL)

ATTEST:
 Kathy Hayes
 Clerk of the Board of Supervisors
 County of Humboldt, State of California

 Kathy Hayes

313-55.1 MEDICAL MARIJUANA LAND USES: COASTAL

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f) the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes

are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than one-hundred (100) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. Therefore, the indoor cultivation of more than one-hundred (100) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
16. The County further finds that the indoor cultivation of one-hundred (100) square feet or less of medical marijuana that is ten (10) feet tall or less per residence or detached

accessory building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

1. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
2. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.
3. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
4. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed one-hundred (100) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof 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.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of one-hundred (100) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed one-hundred (100) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed one-hundred (100) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of one-hundred (100) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than one-hundred (100) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 2400 watts total. The room or area in which cultivation occurs must be served by more than one circuit rated for at least 15 amps (Max 1200 Watts per circuit). Any electrical augmentation or modifications must be installed by the owner or a licensed electrician under a valid building permit.
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana

shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and

10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.
18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

314-55.1 MEDICAL MARIJUANA LAND USES: INLAND

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes

are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than one-hundred (100) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. The indoor cultivation of more than one-hundred (100) square feet of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
16. The County further finds that the indoor cultivation of one-hundred (100) square feet or less of medical marijuana that is ten (10) feet tall or less per residence or detached

accessory building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

5. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
6. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or any other applicable state or federal laws.
7. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
8. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed one-hundred (100) square feet or ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof 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.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of one-hundred (100) square feet or less that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with an individual qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the inland zones, so long as the cultivation is in conformance with this Code and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed one-hundred (100) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed one-hundred (100) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of one-hundred (100) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than one-hundred (100) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 2400 watts total. The room or area in which cultivation occurs must be served by more than one circuit rated for at least 15 amps (Max 1200 Watts per circuit). Any electrical augmentation or modifications must be installed by the owner or a licensed electrician under a valid building permit.
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and

9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and
10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.
18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

ATTACHMENT C

Alternative 3

Ordinance No. _____

Amending Sections 313-55.1 & 314-55.1 of the Humboldt County Zoning Regulations
(Chapter 3 of Division 1 of Title III of the Humboldt County Code)

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT ADDING SECTION 313-55.1 AND SECTION 314-55.1 TO THE HUMBOLDT COUNTY ZONING CODE, RELATING TO THE REGULATION OF INDOOR MEDICAL MARIJUANA CULTIVATION WITHIN A RESIDENCE.

The Board of Supervisors of the County of Humboldt do ordain as follows:

- SECTION 1. Section 313-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 2. Section 314-55.1 of Chapter 3 of Division 1 of Title III is hereby amended as shown on the attached pages.
- SECTION 3. Amendments to 314-55.1 (Regulations Outside the Coastal Zone) shall take effect and be in force thirty (30) days from the date of its passage. Amendments to 313-55.1 (Regulations Inside the Coastal Zone) shall take effect immediately upon certification of the proposed amendments to the local coastal program. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published at least once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 20__.

AYES: Supervisors –
 NOES: Supervisors –
 ABSENT: Supervisors –

 Chair of the Board of Supervisors of the
 County of Humboldt, State of California

(SEAL)

ATTEST:
 Kathy Hayes
 Clerk of the Board of Supervisors
 County of Humboldt, State of California

 Kathy Hayes

313-55.1 MEDICAL MARIJUANA LAND USES: COASTAL

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes

are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. The indoor cultivation of more than fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.

16. The County further finds that the indoor cultivation of fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, or less of medical marijuana that is ten (10) feet tall or less per residence or detached accessory building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

1. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
2. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or compliance with the Coastal Act, or any other applicable state or federal laws.
3. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
4. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.7 Definitions

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

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed ten (10) feet in height and fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same parcel, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof 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.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

Residential Cultivation: the growing of medical marijuana indoors within a residence or detached

accessory structure, as defined herein. The cultivation area must be limited to ten (10) feet in height and 50 square feet or less, or one-hundred (100) square feet or less pursuant to the provisions of Section 314-55.1.8.19. Such cultivation shall be for a qualified patient's personal use and must be subordinate, incidental, and accessory to the residential use.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with a qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the coastal zone, so long as the cultivation is in conformance with this Code and state law, including the California Coastal Act.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total or 2400 watts total in accordance with the provisions of Section 314-55.1.8.19; and
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and

8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and
9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and
10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes; and

18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.
19. A total of one-hundred (100) square feet of indoor medical marijuana cultivation may occur for personal use, which does not exceed ten (10) feet in height, for each residence on a parcel provided the requirements of Sections 313-55.1.8.1 through 313-55.1.8.18 and the following supplemental standards are met:
 - (a) **Electrical Requirements:** The room or area in which cultivation occurs must be served by more than one circuit rated for at least 15 amps. Any electrical augmentation or modifications must be installed by the owner or a licensed electrician under a valid building permit.
 - (b) **Setbacks:** Structures hosting personal use cultivation in excess of 50 ft.² but less than 100 ft.² must be located at least 50 feet from the nearest property line.
 - (c) **Minimum Parcel Size:** Cultivation in excess of 50 ft.² but less than 100 ft.² may only occur on parcels over 1 acre in size.
 - (d) **Interior Improvements to Cultivation Area:** Cultivation area must be constructed with a one hour firewall assembly of green board.
 - (e) *Reserved for Future Use*

314-55.1 MEDICAL MARIJUANA LAND USES: INLAND

55.1.1 Authority and Title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Government Code section 25845, and California Health and Safety sections 11362.83 and 11362.768(f), the Board of Supervisors does hereby enact this Code, which shall be known and may be cited as the “Medical Marijuana Land Use Code”.

55.1.2 Purpose and Intent

The purpose and intent of the Medical Marijuana Land Use Code (“MMLUC” or “this Code”) is to regulate the cultivation of medical marijuana for personal use in a residence or detached accessory building in a manner that is consistent with State law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the unincorporated area of Humboldt County by balancing three primary needs: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

Despite the three needs identified above, nothing in this Code shall be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for non-medical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the State of California. This Code is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

55.1.3 Findings

The Board of Supervisors of the County of Humboldt hereby finds and declares the following:

1. In 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996”).
2. The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
3. In 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

4. Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the County.
5. In August 2008, the California Attorney General issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for non-medical purposes.
6. The federal Controlled Substances Act (codified as 21 U.S.C. sections 801 et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.
7. The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see 21 U.S.C. 903). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law.
8. Law enforcement agencies report that depending upon the marijuana strain and whether it is grown indoors or outdoors, one plant may yield averages of roughly one-quarter to one and a half pounds of usable marijuana per plant. As of 2010, law enforcement indicates the value of illegal marijuana grown in the County to be roughly \$1,500 to \$4,000 per pound.
9. Due to the high monetary value placed upon marijuana, the County has experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The County has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana. Additionally, the County has experienced soil and water contamination due to leaks and improperly stored fuels and supplies for generators used to power grow lights and fans for off-the-grid marijuana grows.
10. Widespread indoor cultivation of marijuana in Humboldt County has led to a decrease in needed rental housing stock as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

11. Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords, who thought they were renting a home for people to live in, later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.
12. Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.
13. The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this Code, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the County anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the indoor cultivation and processing of medical marijuana.
14. The County finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified, necessitates that the County create regulations, such as this Code, to govern the indoor cultivation of medical marijuana in a residence for personal use in the County of Humboldt.
15. The County finds that the indoor cultivation of more than fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building, as defined herein, within the unincorporated area of the County will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions, along with the potential for diesel fuel and oil pollution from generators. The indoor cultivation of more than fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, of medical marijuana that is more than ten (10) feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.
16. The County further finds that the indoor cultivation of fifty (50) square feet, or one-hundred (100) square feet pursuant to the provisions of Section 314-55.1.8.19, or less of medical marijuana that is ten (10) feet tall or less per residence or detached accessory building, which is subordinate, incidental, and accessory to the residential use, within the unincorporated area of the County will achieve the goals of allowing qualified patients the

ability to cultivate medical marijuana in their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

55.1.4 Applicability and Interpretation

1. The indoor cultivation and processing of medical marijuana for personal use in a residence or detached accessory building within the jurisdiction of the County of Humboldt shall be controlled by the provisions of this Code, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Code.
2. Nothing in this Code is intended, nor shall it be construed, to exempt any indoor residential cultivation of medical marijuana for personal use, from compliance with the Humboldt County zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the County Code, or any other applicable state or federal laws.
3. Nothing in this Code is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.
4. The definitions in this Code are intended to apply to the MMLUC. Applicable definitions in Humboldt County Code section 313-135 et seq. and section 111-1 et seq. may also apply to this Code.

55.1.5 Severability

If any section, subsection, sentence, clause, portion, or phrase of this Code or the application thereof, is held invalid, illegal, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other portions of this Code. The County hereby declares that it would have passed this Code and each section, subsection, sentence, clause, portion, or phrase hereof, regardless of the fact that any one or more section, subsection, sentence, clause or phrase has been declared illegal, invalid, or unconstitutional.

55.1.6 Penalties

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the County under the applicable state and county laws, including the County's abatement and administrative penalty procedures.

55.1.8 Indoor Residential Cultivation for Personal Use

The County shall not interfere with an individual qualified patient's indoor residential cultivation of medical marijuana for that patient's personal use in the inland zones, so long as the cultivation is in conformance with this Code and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, indoor residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

1. Medical marijuana cultivation in a residence shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
2. Medical marijuana cultivation in detached accessory buildings shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel; and
3. A total of fifty (50) square feet of indoor medical marijuana cultivation for personal use, which does not exceed ten (10) feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than fifty (50) square feet or more than ten (10) feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and
4. The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and
5. Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total or 2400 watts total in accordance with the provisions of Section 314-55.1.8.19; and
6. All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and
7. The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and
8. No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of section 1703 of the California Fire Code have been met; and

9. On parcels that contain more than one residence, no odor of medical marijuana shall be detectable from the exterior of the residence or detached accessory building by a person of ordinary senses. On parcels that contain only one residence, no odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses; and
10. From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of indoor medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and
11. Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Cottage Industry or a Home Occupation, and are not eligible for an address of convenience; and
12. No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and
13. The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the jurisdiction of the County of Humboldt; and
14. The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and
15. No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of indoor residential cultivation of medical marijuana; and
16. The indoor residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana; and
17. The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes; and
18. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

19. A total of one-hundred (100) square feet of indoor medical marijuana cultivation may occur for personal use, which does not exceed ten (10) feet in height, for each residence on a parcel provided the requirements of Sections 314-55.1.8.1 through 314-55.1.8.18 and the following supplemental standards are met:
- (f) **Electrical Requirements:** The room or area in which cultivation occurs must be served by more than one circuit rated for at least 15 amps. Any electrical augmentation or modifications must be installed by the owner or a licensed electrician under a valid building permit.
 - (g) **Setbacks:** Structures hosting personal use cultivation in excess of 50 ft.² but less than 100 ft.² must be located at least 50 feet from the nearest property line.
 - (h) **Minimum Parcel Size:** Cultivation in excess of 50 ft.² but less than 100 ft.² may only occur on parcels over 1 acre in size.
 - (i) **Interior Improvements to Cultivation Area:** Cultivation area must be constructed with a one hour firewall assembly of green board.
 - (j) *Reserved for Future Use*

ATTACHMENT D

Resolution No. _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; meeting on _____, 2011

RESOLUTION NO. _____

RESOLUTION MAKING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ADOPTING AN ORDINANCE ADDING SECTION 313-55.1 AND SECTION 314-55.1 TO THE HUMBOLDT COUNTY ZONING CODE, RELATING TO THE REGULATION OF INDOOR 'PERSONAL-USE' CULTIVATION WITHIN A RESIDENCE

WHEREAS, California Government Code Section 65853 and Section 312-50 et seq. of the Humboldt County Code sets forth the manner in which a zoning ordinance may be amended; and

WHEREAS, Community Development Services - Planning Division has reviewed and circulated a draft of Phase I of the Ordinance which amends Chapter 3 and Chapter 4 of Title III of the Humboldt County Code, Regulations Inside and Outside the Coastal Zone, in particular Sections 313-55.1 & 314-55.1, relating to the regulation of Indoor 'Personal Use' cultivation within a residence; and

WHEREAS, Community Development Services - Planning Division has submitted documentation showing that the proposed ordinance amendments to the County Regulations will not have a significant effect on the environment pursuant to Sections 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, Community Development Services - Planning Division's staff report includes evidence in support of finding that the proposed Ordinance is consistent with requirements of Section 65853 of the California Government Code and Section 312-50 et seq. of the Humboldt County Code; and

WHEREAS, on January 6th, February 3rd, May 12th, and August 18th 2011, the Humboldt County Planning Commission held public hearings on the proposed ordinance revisions to receive other evidence and testimony; and

WHEREAS, the Planning Commission has reviewed and considered said reports and other testimony presented to the Commission, and on August 18, 2011 recommended that the Board of Supervisors not approve the proposed ordinance amendments; and

WHEREAS, the Board of Supervisors on November 15, 2011 and December 13, 2011 held public hearings to consider the proposed ordinance amendments at which time all persons wishing to give testimony on the matter were heard.

NOW, THEREFORE, be it resolved, determined, and ordered by the Board of Supervisors, based on Community Development Services - Planning Division staff reports, supplemental reports, testimony presented at the public hearing(s), and having considered the recommendation of the Planning Commission, that the Board:

1. Finds that the Ordinance which amends Chapters 3 and 4 of Title III of the Humboldt County Code, Regulations Inside and Outside the Coastal Zone, in particular the addition of section 313-55.1 and section 314-55.1, relating to the regulation of Indoor 'Personal Use' cultivation within a residence, has been reviewed for compliance with requirements of CEQA, and the amendments have been determined to be categorically exempt from CEQA pursuant to Section 15061(b)(3) of CEQA Guidelines, and could not have a significant effect on the environment.
2. Makes the findings for approval of the amendments to the Zoning Regulations (Case No.: OR-11-01) based on the evidence submitted and further finds that the Local Coastal Program Amendment will be carried out in accordance with the Coastal Act.

3. Approves and adopts Ordinance No. ____ which amends Chapters 3 and 4 of Title III of the Humboldt County Code, Regulations Inside and Outside the Coastal Zone, in particular Section 313-55.1 & 314-55.1, relating to the regulation of Indoor 'Personal Use' cultivation within a residence.

BE IT FURTHER RESOLVED by the Humboldt County Board of Supervisors that:

1. The Community Development Services – Planning Division is hereby directed to transmit the Local Coastal Program Amendment to the California Coastal Commission for certification in accordance with the Coastal Act, the Local Coastal Program Amendment to become effective upon approval by the Coastal Commission.
2. The Community Development Services - Planning Division is hereby directed to prepare and file a Notice of Exemption with the County Clerk and Office of Planning and Research pursuant to California Environmental Quality Act.
3. The Clerk of the Board is hereby directed to give notice of the decision to any interested party.
4. The Clerk of the Board is hereby directed to publish the Post-Adoption Summary of Ordinance fifteen (15) days after its passage.

 Mark Lovelace, Chair, Humboldt County Board of Supervisors

Adopted on motion by Supervisor _____, second by Supervisor _____ and the following vote:

AYES: Supervisors:
 NAYS: Supervisors:
 ABSENT: Supervisors:
 ABSTAIN: Supervisors:

STATE OF CALIFORNIA)
)ss
 County of Humboldt)

I, Kathy Hayes, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

Kathy Hayes
 Clerk of the Board of Supervisors
 of the County of Humboldt,
 State of California.

ATTACHMENT E

Post-Adoption Summary of the Ordinance

SUMMARY OF ORDINANCE

(To be published fifteen days after adoption of this ordinance.)

On November 15, 2011, the Humboldt County Board of Supervisors adopted Ordinance No. ____, which adding Sections 313-55.1 and 314-55.1 to the Humboldt County Zoning Code, relating to the regulation of Indoor 'Personal-Use' Medical Cannabis Cultivation within a residence. 313-55.1 of the regulations will be transmitted as a Local Coastal Program Amendment to the California Coastal Commission for certification in accordance with the Coastal Act, with the Local Coastal Program Amendment becoming effective upon approval by the Coastal Commission.

The names of the Supervisors voting for and against are as follows:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

A copy of the Ordinance is posted in the office of the Clerk of the Board of Supervisors, Room 111, 825 Fifth Street, Eureka, California.

ATTACHMENT F

Findings for Adoption of Zoning Text Amendments

ADMINISTRATIVE PROCEDURES ZONING TEXT AMENDMENT

Findings:

Section 312-50 of the Humboldt County Code (H.C.C.) specifies the findings that must be made in order to approve an amendment to the Zoning Regulations and the Implementation Plan for the certified Local Coastal Program. The required findings are as follows:

1. The proposed change is in the public interest.
2. The proposed change is consistent with the General Plan.
3. That amendment to the County's Certified LCP may be approved where the California Coastal Commission finds, upon submittal by the County, that the amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 commencing with Section 30200 of the Public Resources Code, and the implementing ordinances are in conformity with and carry out the provisions of the certified LCPs.
4. The proposed amendment does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

Public Interest and General Plan, Coastal Act and Housing Element Consistency.

1. Public Interest: The following table identifies the evidence which supports finding that the proposed Zoning Ordinances and LCP Amendments are in the public interest.

Applicable Requirements	Evidence Supporting the Finding
<p>Government Code Section 65356.1 and §1452.2 of the Framework Plan.</p> <p><i>The General Plan Amendment must be in the public interest.</i></p>	<p>The project applies countywide. The implementation measures (zoning ordinance changes) will provide guidance on a unique form of land use not previously anticipated by the Zoning Regulations. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal medical marijuana cultivation in residential zones. The MMLUO will help prevent conflicts between indoor medical marijuana cultivation for personal use and neighboring land uses. Therefore, the proposed changes can be found to be in the public interest.</p>

2. General Plan Consistency: The following table identifies the evidence which supports finding that the proposed Zoning Ordinance and LCP Amendments are consistent with a comprehensive view of the General Plan Volume 1 (Framework Plan).

Applicable Requirements	Evidence Supporting Finding
§1330 Consistency	
<p>The elements of the General Plan must be consistent.</p> <p>All the goals, policies and standards must be consistent.</p> <p>The General Plan text and diagrams must support each other and show the same conclusions.</p> <p>The data base must be consistent for all the elements.</p> <p>When a portion of the plan is amended, then the rest of the plan and its implementing programs must be brought into conformity.</p> <p>Zoning or the implementation of the plan is required to be consistent with the plan.</p>	<p>The project applies countywide. The implementation measures (zoning ordinance changes) will provide guidance on a unique form of land use not previously anticipated by the Zoning Regulations. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal medical marijuana cultivation in residential zones. The MMLUO will help prevent conflicts between indoor medical marijuana cultivation for personal use and neighboring land uses. Therefore, the proposed changes can be found to be consistent with the goals, policies, and standards of the current General Plan.</p>
§1452.2 Required Findings	
<p>Base information or physical conditions have changed; or</p> <p>Community values and assumptions have changed; or</p> <p>There is an error in the plan; or</p> <p>To maintain established uses otherwise consistent with a comprehensive view of the plan.</p>	<p>The base information of the General Plan changed with the passage of Proposition 215 in 1995 and adoption of Senate Bill 420 in 2004.</p> <p>The new implementing ordinances and LCP Amendments are required to bring the other elements of the General Plan in line with the provisions of state law that pertain to medical cannabis. Medical Cannabis uses can be considered 'established' as 15 years have elapsed since the passage of state laws establishing Medical Marijuana use.</p>

3. Consistency with State Laws: The following table identifies the evidence which supports finding that the proposed Zoning Ordinance and LCP Amendments are consistent with State Laws.

Section(s)	Applicable Requirements	Evidence Supporting Finding
<p>Consistency: Administrative Regulations – Title 14, § 13551 And Public Resources Code, § 30200 (Coastal Act)</p> <p>The proposed amendments must conform to the policies contained in Chapter 3 of the Coastal Act. Chapter 3 sets forth policies regarding the following issues:</p>	<p>Access (including provisions for access with new development projects, public facilities, lower cost visitor facilities, and public access)</p> <p>Recreation (including protection of water-oriented activities, ocean- front land protection for recreational uses, aqua-cultural uses, and priority of development purposes)</p> <p>Marine Resources (including protecting biological productivity, prevent hazardous waste spills, diking, filling and dredging, fishing, revetments and breakwaters, and water supply and flood control)</p> <p>Land Resources (including environmentally sensitive habitats, agricultural lands, timberlands, and archaeological resources)</p> <p>Development (including scenic resources, public works facilities, safety, and priority of coastal dependent developments)</p> <p>Industrial Development (including location and expansion, use of tanker facilities, oil and gas development and transport (both onshore and off), and power plants.</p>	<p>The proposed Zoning Ordinance and Local Coastal Program amendments will help regulate a unique form of land use not previously anticipated by the Zoning Code. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal medical marijuana cultivation in residential zones. As such, no impact on coastal access concerns, recreational uses, marine or land resources, and industrial development is anticipated.</p> <p>The proposed new regulations would permit indoor personal use cultivation within residences and detached accessory structures subject to specific limits and requirements. It is therefore not expected that development would result that would interfere with coastal industrial development opportunities or existing uses.</p>
<p>30510(a) of the Act.</p> <p>Submission to the Commission</p> <p>The LCP Amendment shall be carried out in accordance with the Coastal Act (pursuant to Section 30510(a) of the Act.</p>	<p>The LCP Amendments will be carried out in accordance with § 30510(a) of the Coastal Act. The amendment(s) shall be forwarded to the Coastal Commission for review and certification, following adoption by the Board of Supervisors, and including sufficient materials to insure a ‘thorough and complete review’.</p>	

4. IMPACT ON RESIDENTIAL DENSITY TARGET: The following table identifies the evidence which supports finding that the proposed project will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

§ 312-17.1.5 Housing Element Densities	
Applicable Requirements	Evidence Supporting Finding
<p>The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the mid point of the density range specified in the plan designation), except where: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.</p>	<p>The proposed Zoning Ordinance and Local Coastal Program amendments will help regulate a unique form of land use not previously anticipated by the Zoning Code. The development of these new policies and performance standards will provide guidance and new tools to address land use issues surrounding personal medical marijuana cultivation in residential zones. These provisions will not affect the number of housing units available within the county. In fact, the failure to place restrictions on residential cultivation could result in the conversion of housing units to exclusive use as cannabis production and processing facilities; thus reducing available housing stock (contrary to the goals of the Housing Element).</p>