

ORDINANCE NO. 17-14

**AN ORDINANCE OF THE COUNTY OF SISKIYOU
RETITLING CHAPTER 14 OF TITLE 10
OF THE SISKIYOU COUNTY CODE
REGARDING THE CULTIVATION OF CANNABIS,
AND AMENDING THEREIN SECTIONS 10-14.010 THROUGH 10-14.030,
AND SECTION 10-14.060,
AND DELETING SECTIONS 10-14.040, 10-14.050, AND 10-14.070.**

THE BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU ORDAINS
AS FOLLOWS:

SECTION I: The Title of Chapter 14 is hereby amended to read as follows:

"CHAPTER 14. – PERSONAL CANNABIS CULTIVATION"

SECTION II: Section 10-14.010 is hereby amended to read as follows:

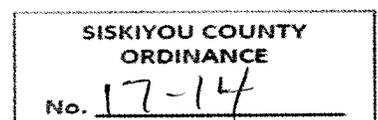
"Sec. 10-14.010. - Authority, title, and findings.

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code sections 25845 and 53069.4, the Board of Supervisors does enact this chapter, which shall be known and may be cited as the "Siskiyou County Personal Cannabis Cultivation Ordinance."

The Board of Supervisors finds and declares the following:

- (a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").
- (b) The intent of the proposition was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments

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supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

- (c) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.
- (d) Health and Safety Code section 11362.83, both as originally enacted, and as amended by Assembly Bill 1300, further recognize that counties and cities may also adopt and enforce any other ordinances that are consistent with the Medical Marijuana Program.
- (e) Local land use authority over marijuana cultivation was upheld by the California Court of Appeal in *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704. The Court specifically held that "[n]either the Compassionate Use Act nor the Medical Marijuana Program grants ... anyone ... an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court concurred that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land ...".
- (f) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance

that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

- (g) The County's unique geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the county, provide conditions that are favorable to marijuana cultivation. Marijuana growers can achieve a high per-plant yield because of the county's favorable growing conditions. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half ($\frac{1}{2}$) pound, to 846 grams, or nearly two (2) pounds. Based on law enforcement seizures, yields in Siskiyou County have tended to be at the higher end of this range. The "street value" of a single cannabis plant is substantial. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach Two Thousand (\$2,000.00) Dollars to Five Thousand (\$5,000.00) Dollars. A single marijuana plant cultivated within the county can thus yield Four Thousand (\$4,000.00) Dollars or more in salable marijuana.
- (h) Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

- (i) As recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (j) It is the purpose and intent of this chapter to implement state law by providing a means for regulating personal cannabis cultivation in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Siskiyou. This chapter is intended to be consistent with Proposition 215, Senate Bill 420, Proposition 64 and the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), as amended from time to time and towards that end, is not intended to prohibit persons from exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which personal cannabis cultivation for medicinal or adult use may be undertaken in the unincorporated area of the County, including restrictions on the amount of cannabis that may be cultivated in any location or premises, in order to protect the public health, safety, and welfare in Siskiyou County.
- (k) On November 8, 2016, the voters of California adopted Proposition 64. Proposition 64 allows the recreational possession and use of cannabis, as well as the personal cultivation of up to six (6) recreational cannabis plants per residence by adults age twenty-one (21) years and older. While a local jurisdiction may ban the outdoor cultivation of these plants, it may only reasonably regulate indoor cultivation of these plants as expressed in Health and Safety Code section 11362.2.
- (l) The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer the

right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the County will achieve a significant reduction in the aforementioned harms caused or threatened by the cultivation of marijuana in the unincorporated area of Siskiyou County.

- (m) Attempts to use the general enforcement provisions of this Code to address illegal cultivation of marijuana have been ineffective and procedures specific to marijuana are necessary to address flagrant and pervasive illegal cultivation. The provisions contained in this chapter that are specific to enforcement of the Personal Cannabis Cultivation Ordinance are intended to address these concerns and more effectively address the harms caused by noncompliant marijuana cultivation, while still accommodating the needs of legal adult users and medical patients and their caregivers.
- (n) While code enforcement in Siskiyou County has historically been complaint-driven, that has never been a precondition to the enforcement of this chapter. Further, the board of supervisors recognizes that persons affected by code violations are frequently reluctant to file complaints, for fear of retaliation. Consequently, for purposes of clarity, no provision of this Code shall be construed to require a formal or informal complaint as a condition to enforcement of this chapter, or to prevent the enforcing officer from undertaking such enforcement on his or her own initiative.
- (o) Nothing in this chapter shall be construed to allow the use of cannabis, or allow any activity relating to cannabis, including the cultivation, distribution, or consumption of cannabis, that is otherwise illegal under state or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Siskiyou County District Attorney, the Attorney General of State of California, or the United States of America.”

SECTION III: Section 10-14.015 is hereby amended to read as follows:

“Sec. 10-14.015. – Local licensing.

(a) This chapter establishes criteria and standards for personal, noncommercial, cannabis cultivation for medicinal or adult use to the extent authorized by state law. Personal cultivation in strict compliance with both this Chapter and state law does not require a local license within the unincorporated area of the County.

(b) The County shall not issue any license allowing mobile delivery of marijuana, and mobile delivery of marijuana is hereby prohibited as provided in Business and Professions Code section 19340.”

SECTION IV: Section 10-14.020 is hereby amended to read as follows:

“Sec. 10-14.020. - Definitions

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

- (a) "Church" means a building, together with its accessory buildings and uses, maintained and controlled by a body organized to conduct religious worship and used primarily for religious worship and related activities.
- (b) "Collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by agreement in order to cooperatively cultivate marijuana for medical purposes. The term "collective" shall include "cooperative" unless the context clearly indicates otherwise.
- (c) "County Building Official" means the Deputy Director of Building for the Siskiyou County Community Development Department.
- (d) "Cultivation" means the planting and growing of one or more marijuana plant(s) or any part thereof.

- (e) "Director" means the Director of the Siskiyou County Community Development Department.
- (f) "Department" means the Siskiyou County Community Development Department.
- (g) "Enforcing officer" means the Director of the Siskiyou County Community Development Department or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this chapter.
- (h) "Fence" means a barrier constructed of any materials or combination of materials of sufficient strength and dimension to prevent unauthorized entry. The term "fence" does not include bushes, hedgerows, plastic sheeting, cloth material (tarpaulins), or retaining walls.
- (i) "Greenhouse" means, for purposes of this chapter, an accessory structure to a residence located on the same premises, legally established with all required permits approved, secure from unauthorized entry and completely enclosed with one or more secure locking doors as the only means of ingress and egress, where plants are grown.
- (j) "Harvest" means the drying, processing, or storage of marijuana.
- (k) "Legally established residence" means a structure designed, approved, and maintained for permanent human habitation pursuant to Title 24 or Title 25 of the California Code of Regulations or constructed prior to adoption of the California Building Standards Code by the County of Siskiyou. "Legally established residence" does not include a structure that has been deemed substandard by the County Building Official or his/her authorized agents.
- (l) "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

- (m) "Marijuana " or "Cannabis" is used herein interchangeably and means any part of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" or "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Marijuana" or "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" or "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- (n) "Outdoors" means any location that is not within a Private Residence or a fully enclosed and secure accessory structure or greenhouse as defined herein.
- (o) "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.
- (p) "Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7.
- (q) "Private Residence" means a house, an apartment unit, a mobile home, or other similar dwelling as defined in Health and Safety Code section 11362.2(b)(5).
- (r) "Public library" means a public facility in which literary, musical, artistic, or reference materials are kept for reading, reference or lending.
- (s) "Public park" means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.
- (t) "Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7.

- (u) "School" means a place for systematic instruction in any branch or branches of knowledge, including public, parochial and nonprofit elementary or secondary schools, attendance at which satisfies the requirements of the Compulsory Education law (Education Code Section 48200 et seq.).
- (v) "Youth oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a child care center."

SECTION V: Section 10-14.030 is hereby amended to read as follows:

"Sec. 10-14.030. - Nuisance declared.

- (a) The cultivation of marijuana on any premises in violation of this chapter is hereby declared to be unlawful and a public nuisance that is subject to abatement in accordance with this chapter, Chapter 5 of Title 1, and/or any other remedy available at law or equity.
- (b) Cultivation is prohibited on any parcel unless there is an occupied, legally established residence on the premises that is connected to an approved sewer system or to a Siskiyou County inspected and approved wastewater disposal system.
- (c) Cultivation within a residence or any other structure used or intended for human occupancy is prohibited.

(1) *Exemption for medicinal and personal use cultivation of six or fewer plants within a Private Residence.* The prohibition set forth in subsection (c), shall not apply to medicinal or personal use cultivation of six (6) or fewer living cannabis plants within a Private Residence, provided that (1) cultivation is limited to a single cultivation area no larger than 100 square feet; (2) the cultivation area is secured in

a locked space that prevents unauthorized access by minors; and (3) cannabis cultivation is not visible from a public place.

- (d) Outdoor cultivation on any premises is prohibited.
- (e) Excepting as provided under subsection 10-14.030(c)(1), medicinal and personal use cultivation may only occur on a premises within a detached residential accessory structure to a single-family dwelling unit. .
- (f) Accessory structures used for cultivation shall meet all of the following criteria:
 - (1) The accessory structure shall be legally constructed with all applicable permits.
 - (2) The accessory structure shall be secure from unauthorized entry.
 - (3) If the accessory structure is a greenhouse, for security and visual screening purposes, it shall additionally be surrounded by a secure solid minimum six (6') foot high fence located within ten (10') feet of the greenhouse, and equipped with a lockable gate.
- (g) Cultivation within an accessory structure pursuant to subsection 10-14.030(e) shall not exceed twelve (12) cannabis plants on any premises, inclusive of plants cultivated in the associated single-family residence pursuant to subsection 10-14.030(c)(1).
- (h) Cultivation of marijuana in an accessory structure is prohibited on any premises located within the following areas:
 - (1) Within one thousand (1,000') feet of a school, public park, public library, church, or youth-oriented facility. Distance shall be measured in a straight line from either (A) the nearest exterior wall of the indoor cultivation structure or (B) the nearest fence surrounding the greenhouse cultivation structure or from the nearest exterior wall of the greenhouse cultivation structure, whichever is closer, as applicable, to the nearest property line of the nearest school, public park, public library, church, or youth-oriented facility.

- (2) In any location where the marijuana plants would be visible from any public right-of-way or publicly traveled private roads at any stage of their growth.
- (i) All persons and entities engaging in the cultivation of marijuana shall:
 - (1) Have a legal water source on the premises;
 - (2) Not engage in unlawful or unpermitted surface drawing of water for such cultivation; and/or
 - (3) Not permit illegal discharges of water from the premises.
 - (j) Marijuana cultivation shall not adversely affect the environment or the public health, safety, or general welfare by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of plant or animal poisons, or hazardous materials, processes, products or wastes, or by any other way.
 - (k) No person owning, leasing, occupying, or having charge or possession of any parcel or premises within the county shall cause, allow, suffer, or permit such premises to be used for the cultivation of marijuana in violation of this Code.“

SECTION VI: Section 10-14.040 is hereby deleted in its entirety.

SECTION VII: Section 10-14.050 is hereby deleted in its entirety.

SECTION VIII: Section 10-14.060 is hereby amended to read as follows:

“Sec. 10-14.060. - Environmental protection.

- (a) The unlawful or unpermitted surface drawing of water for cultivation is prohibited.
- (b) The discharge of contaminated water from the premises is prohibited.
- (c) All chemicals used in the cultivation and/or harvest of marijuana shall be used, stored, and disposed of pursuant to applicable laws and regulations.

- (d) All power sources, electrical fixtures, and electrical conveyances used in the cultivation and/or harvest of marijuana shall be installed, connected, and maintained pursuant to applicable laws and regulations.
- (e) If a generator is used for any purpose related to the cultivation, harvest, or processing of marijuana, said generator shall be located at least 100 feet from all property lines and generate noise levels not exceeding forty-five (45) dB at the nearest property line."

SECTION VIII: Section 10-14.070 is hereby deleted in its entirety.

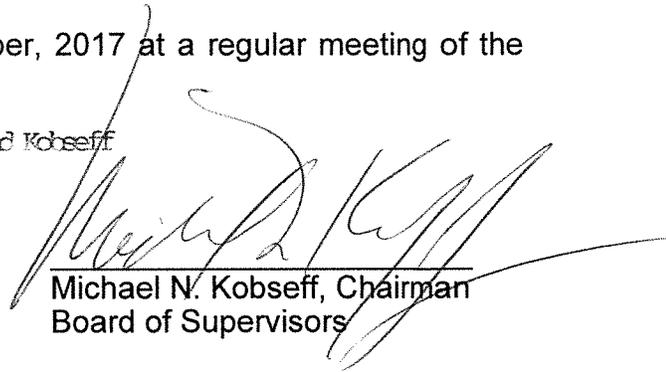
SECTION IX: Constitutionality: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION XI: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed and published in the County of Siskiyou.

PASSED AND ADOPTED this 5th day of December, 2017 at a regular meeting of the board of Supervisors by the following vote:

AYES: Supervisors Criss, Haupt, Valenzuela, Nixon and Kobseff
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

ATTEST:
COLLEEN SETZER, CLERK,
Board of Supervisors
By Wendy Dijk Deputy


Michael N. Kobseff, Chairman
Board of Supervisors