

ORDINANCE NO. 15-18

**AN ORDINANCE OF THE COUNTY OF SISKIYOU  
AMENDING CHAPTER 14 OF TITLE 10  
OF THE SISKIYOU COUNTY CODE  
REGARDING CULTIVATION OF MEDICAL MARIJUANA**

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

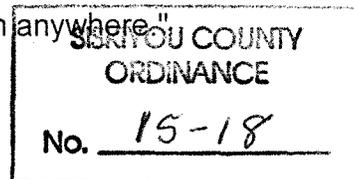
SECTION I: Section 10-14.010 is hereby amended to read as follows:

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

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, and Health and Safety Code section 11362.83, the Board of Supervisors does enact this chapter, which shall be known and may be cited as the "Siskiyou County Medical Marijuana 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 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 two hundred thirty-six grams, or about one-half pound, to eight hundred forty-six grams, or nearly two 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 dollars to five thousand dollars. A single marijuana plant cultivated within the county can thus yield four thousand 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 the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Siskiyou. This chapter is intended to be consistent with Proposition 215, Senate Bill 420,

and the Medical Marijuana Regulation and Safety Act of 2015 (A.B. 243, A.B. 266, and S.B. 643) 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 marijuana may be cultivated, including restrictions on the amount of marijuana that may be cultivated in any location or premises, in order to protect the public health, safety, and welfare in Siskiyou County.

- (k) A.B. 243 expressly provides that the exemption of certain persons from state laws regulating the cultivation of marijuana or related activities does not limit or prevent a county from regulating or banning marijuana cultivation, storage, manufacture, transport, provision, or other activity by such persons.
- (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 Medical Marijuana 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 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 ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Siskiyou County District Attorney, the Attorney General of State of California, or the United States of America.

SECTION II: Section 10-14.015 of Chapter 14 of Title 10 is hereby added to read as follows:

**“Section 10-14.015. – Local Licensing.** Effective January 1, 2016, no person may engage in marijuana cultivation unless such person has been issued a license to do so by the County of Siskiyou. In accordance with Health and Safety Code section 11362.777, the requirements for such a local license shall be no less stringent than the

requirements of the California Department of Food and Agriculture. 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 III: Section 10-14.090 of Chapter 14 of Title 10 is hereby added to read as follows:

**“Section 10-14.090. - Enforcement.** Notwithstanding any other provision of this Code, this section may be used to enforce the provisions of this Chapter.

- (a) **Abatement—Initiation of proceedings.** The board of supervisors on its own motion or an enforcing officer may invoke the provisions of this chapter in lieu of or in addition to instituting civil enforcement proceedings or a criminal prosecution as to any violation of this Chapter that has occurred or is occurring or as to any other related nuisance.
- (b) **Notice.** Every notice to abate a violation of this Chapter or imposing an associated administrative fine or penalty shall be served upon the owner or the person in possession of the site at which the nuisance exists. If the owner or possessor cannot be personally served, the notice shall be posted at the site and mailed by certified or registered mail to the address of the owner(s) of the site, as determined from the latest equalized assessment roll.

Except as to an act or condition that constitutes an immediate threat to public health or safety, every abatement notice issued under this section shall permit the owner or possessor of the site upon which the nuisance exists at least five calendar days in which to voluntarily abate the nuisance. Every notice of abatement issued under this section shall state:

- (1) The act or condition which constitutes the nuisance;
- (2) Any provision of this Chapter deemed to have been violated by the commission of the act or the existence of that condition;
- (3) The maximum amount of time for voluntary abatement of the nuisance;
- (4) The name, address and telephone number of the person who caused the notice to be served;
- (5) The amount and basis for any administrative fine or penalty to be imposed and an admonishment that the County may seek recovery of its costs of investigation, enforcement, and abatement pursuant to Chapter 5 of Title 1; and
- (6) The time within which the owner or possessor of the site may request a hearing before the board of supervisors or any person or body authorized to hear the matter on its behalf, and that if so requested, a hearing will be held as provided in subsection (d).

The failure of any person to receive a notice given pursuant to this subsection (b) shall not constitute grounds for any court to invalidate any subsequent action by the county or any of its officers, agents or employees to abate the nuisance.

- (c) **Demand for hearing.** If the owner or possessor of the site demands a hearing within the time set forth in the abatement notice, the board of supervisors or the person or body authorized to hear the matter on behalf of the board shall set the matter for hearing to be held pursuant to subsection (d). If no demand for a hearing is made within the time provided in the abatement notice, the board of supervisors or the person or body authorized to act on its

behalf may set the matter for hearing to be held pursuant to subsection (d) whenever a hearing is deemed necessary to substantiate the need for abatement by the county or the public interest will be served. The board of supervisors or the person or body authorized to act on its behalf may dispense with a public hearing and elect to proceed under the provisions of subsection (e) if it determines that a sufficient factual basis exists to warrant abatement by the county.

(d) **Hearing procedures.**

- (1) The enforcing officer with jurisdiction to cause the abatement of the alleged nuisance shall first describe the acts or conditions constituting a nuisance and the basis for any administrative fine or penalty to be imposed, and shall then present evidence specifically addressing the grounds set out in the notice of abatement. Thereafter, the objector may present evidence to refute the enforcing officer's allegations.
- (2) A hearing held under this subsection shall be conducted pursuant to rules of procedure adopted or approved by the board of supervisors. Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding subject to this chapter except to the extent that the board of supervisors otherwise provides by rule of procedure. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- (3) At the conclusion of the hearing, the board of supervisors or the

person or body authorized to act on its behalf shall determine, based on the evidence before it:

- (A) Whether the acts or conditions specified in the notice of abatement exists;
- (B) Whether those acts or conditions constitute a nuisance;
- (C) If a nuisance is determined to exist, whether it should be abated by the county;
- (D) If a nuisance is determined to exist, or to have existed when the notice of violation was given, whether a fine or penalty shall be imposed, and the amount thereof; and
- (E) If a nuisance is determined to exist, any civil administrative penalty that will be assessed pursuant to Section 10-14.100.

(4) If the board or person or body authorized to act on its behalf finds that the alleged nuisance does exist and should be abated, abatement of the nuisance shall be ordered. An order to abate a nuisance is final immediately, unless the order or a provision of this code expressly provides otherwise.

(e) **Abatement by owner or county.** A copy of the written findings of fact and order of abatement shall be served personally or by mail upon all persons upon whom the notice of abatement was served. The order may direct that any occupancy, use or activity cease immediately if its existence or continuation is found to be an immediate threat to health or safety. Otherwise, abatement shall be commenced by the owner within five calendar days of the service of

the findings of fact and the order, or any longer period provided in the order, and shall continue with reasonable diligence until complete. If the work is not commenced and completed in that manner, the enforcing officer or other designated county officer or employee shall proceed to abate the nuisance. The cost of abatement, including but not limited to the costs of inspection, actual work done, and the abatement proceedings, shall constitute the cost of the abatement within the meaning of Government Code Section 25845 and may be specially assessed against the parcel of land upon which the abatement occurs as provided in that section. The cost of abatement may also be recovered in a civil action brought by the county to abate any existing nuisance or to enjoin any pending or threatened violation of this code.

- (f) **Nonexclusive remedy.** This section is an alternative to and does not supersede any other provision of law that authorizes a nuisance to be abated or enjoined.

SECTION IV: Section 10-14.100 of Chapter 10 of Title 14 is hereby added to read as follows:

**“Administrative civil penalties.** In addition to any other remedies provided by this Code or State Law, there is hereby imposed the following civil penalty for each violation of this chapter, as imposed by the Enforcing officer:

- “(a) Up to five hundred dollars (\$500.00) per day for the first violation; and up to one thousand dollars (\$1,000.00) per day for each subsequent violation of this chapter for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.

“(b) The Enforcing officer shall have the sole and exclusive discretion to impose the civil penalties set forth in this Section. The Enforcing officer shall not impose a penalty set forth in this Section, unless the Enforcing officer's department has established a written policy setting forth how civil penalties are determined. Such policy may take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of penalty to be imposed by this Section.

“(c) The charges imposed by this Section shall not apply if the property owner establishes all of the following:

- (i) That, at the time he or she acquired the property, a violation of this Code already existed on the property;
- (ii) The property owner did not have actual or constructive notice of the existence of that violation; and
- (iii) Within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the Enforcing officer, to meet the requirements of this Code.

“(d) In the event a property owner, in the opinion of the Director, abates the nuisance

in a timely manner after the Notice and Order to Abate has been issued, the Director has the authority to waive or reduce the amount of penalties owed, if in his or her opinion such a reduction is warranted.”

SECTION V: Section 10-14.020, subsection (m), is hereby amended to read as follows:

“Marijuana plant’ means any mature plant or immature plant of Cannabis sativa, Cannabis indica or a hybrid of the two, unless otherwise specifically provided herein. The term "marijuana plant" does not include seeds.

SECTION VI: Section 10-14.030, subsection (c), subdivision (1), is hereby amended to read as follows:

“The cultivation and/or harvest of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, Chapter 5, Title 1, and/or any other remedies available at law or equity, unless all of the following conditions are satisfied:

- (1) 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 .

SECTION VII: 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.

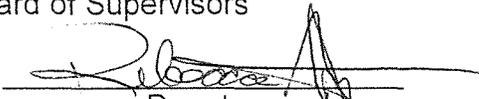
SECTION VIII: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed and published in the County of Siskiyou.

PASSED AND ADOPTED this 8th day of December, 2015, at a regular meeting of the Board of Supervisors by the following vote:

AYES: Supervisors Valenzuela, Bennett, Criss, Haupt and Kohseff  
NOES: 0  
ABSENT: 0  
ABSTAIN: 0

  
\_\_\_\_\_  
Ed Valenzuela, Chairman  
Board of Supervisors

ATTEST:  
COLLEEN SETZER, CLERK,  
Board of Supervisors

By   
Deputy