

ORDINANCE NO. 2017-004

AN ORDINANCE OF THE COUNTY OF LASSEN
DEFINING ALLOWABLE CANNABIS ACTIVITIES

The Board of Supervisors of the County of Lassen, State of California, ordains as follows:

Section One: Section 19.010 of the Lassen County Code is hereby amended to read, in its entirety:

"19.010 Authority and title.

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 hereby enacts this title, which shall be known and may be cited as the "Lassen County Cannabis Regulation Ordinance."

Section Two: Section 19.020 of the Lassen County Code is amended to read, in its entirety:

"19.020 Findings and purpose.

The Board of Supervisors of the County of Lassen hereby 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 Proposition 215 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- (d) Health and Safety Code section 11362.83, both as originally enacted, and as amended by Assembly Bill 1300, further recognize that counties and cities may also adopt and enforce any other ordinances that are consistent with the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) The courts in California have held that neither the Compassionate Use Act nor the Medical Marijuana Program grants anyone an unfettered right to cultivate marijuana for medical purposes or limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute. (See *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 and *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729.)
- (f) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provide comprehensive regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Lassen County can adversely affect the health, safety, and well-being of the County and its residents. 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.
- (g) Cultivation of any amount of marijuana at locations or premises within 1000 feet of existing schools, school bus stops, public parks, and licensed day care facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.
- (h) 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.
- (i) It is the purpose and intent of this title 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 Lassen. This title is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this title is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location

or premises, in order to protect the public health, safety, and welfare of the residents of Lassen County.

- (j) 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 title, the County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Lassen County.
- (k) In the Fall of 2014 and the Spring of 2015, the Lassen County Board of Supervisors received substantial testimony over the course of several meetings related to the impacts upon the peace, health, and safety of the residents of Lassen County as a result of the unregulated indoor and outdoor cultivation of marijuana. As a result of this public testimony, the Lassen County Board of Supervisors directed be prepared, and subsequently adopted April 21st of 2015, Title 19 to the Lassen County Code. Title 19 sought to limit, for the first time in Lassen County, the impacts which resulted from unregulated marijuana cultivation, both indoor and outdoor.

In late 2015 and early 2016, the Lassen County Board of Supervisors received more testimony regarding the cultivation of marijuana in Lassen County since the initial adoption of Title 19 just months before. The Board of Supervisors heard testimony that many of the outdoor cultivation locations that had been creating a nuisance were eliminated as a result of the adoption of Title 19 and its enforcement. The Board of Supervisors also heard testimony that the number of cultivation sites in Lassen County was expanding, predominantly on vacant land in the most rural parts of the County.

On or about April 12, 2016, the Lassen County Board of Supervisors amended Title 19 for the purpose of limiting cultivation to only those parcels of land within Lassen County where there was already a lawfully established residential structure.

During the 2016 growing season, there were many cultivators within Lassen County that chose to simply ignore the requirement that cultivation could only occur on land which had a lawfully established residential structure.

On or about October 11, 2016, the Lassen County Board of Supervisors amended Title 19 imposing a ban on all cultivation of marijuana in Lassen County.

- (l) In the Fall of 2015, the California Legislature passed and the Governor signed three significant pieces of legislation regarding medical marijuana. AB 266, AB 243, and SB 643 created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. Importantly, all licenses which could be issued by the state for such activities must first be approved by local government. These laws went into effect January 1, 2016. However, the state indicated it needed until January 1, 2018 to create the new agencies that would be administering such a new licensing system, and to draft and adopt new regulations regarding the licensing that will occur. To date, no such regulations have been proposed or adopted.
- (m) On November 8, 2016, the voters of California adopted proposition 64. Proposition 64 allows

the recreational possession and use of cannabis and cannabis products. As part of that initiative, commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of cannabis was authorized. Like the legislative enactments the year before on medicinal marijuana, proposition 64 created a new comprehensive state licensing system which would go into effect on January 1, 2018. To date, no such draft regulations have been proposed or adopted. Unlike the legislative enactment the year before related to medical marijuana, legislative silence on the issue of commercial recreational cannabis activities by local government could nevertheless result in the issuance of state licenses to conduct such activities.

- (n) The Lassen County Board of Supervisors finds and declares two intentions with regards to this amendment to Title 19. First, commercial cannabis activities, recreational or medical, in California are here to stay. The Lassen County Board of Supervisors has no particular objection to commercial activity based on cannabis. However, the Lassen County Board of Supervisors does have objection to commercial activity, of any kind, being approved without sufficient consideration being afforded to its impact on the environment and community. Due to the lack of even “draft” regulations being adopted from the State of California related to these very impactful activities, the Lassen County Board of Supervisors finds it imprudent to, at this time, allow a licensing scheme for an activity whose regulatory framework is now mostly unknown.

Secondly, the Lassen County Board of Supervisors is mindful of the need of individuals who continue to want to cultivate marijuana not for commercial purposes but for personal medical reasons. Likewise, the Lassen County Board of Supervisors is also aware that proposition 64, the Adult Use of Marijuana Act, allows an individual to cultivate a certain amount of marijuana for recreational purposes and that local government may not limit such cultivation below a certain threshold amount as expressed in California Health and Safety Code section 11362.2.”

Section Three: Section 19.030 of the Lassen County Code is hereby amended to read, in its entirety:

“19.030 Definitions

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

“Accessory structure” means within a fully enclosed and secure structure that complies with the California Building Standards Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. An accessory structure is a structure that is secondary or incidental to a private residence. A structure cannot be an accessory structure if there is not private residence on the premises. A greenhouse or hoop house is not an accessory structure for purposes of this Title and all cultivation within a greenhouse or hoop house is to be deemed “Outdoors”.

"Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

"Enforcing officer" means the Lassen County Sheriff, and his or her deputies, the Lassen County Director of Planning and Building Services, and his or her designee, and the Lassen County Director of Health and Social Services, and his or her designee, each of whom is independently authorized to enforce this title.

"Fence of substantial construction" means a seven-foot fence constructed of no less than four by four-inch wood posts, or "2 and 5/16" inch steel posts, secured in the ground no less than thirty inches below grade, constructed in a workmanlike manner, spaced no further than eight feet apart, with no less than two by four-inch wood rails, no fewer than three each between posts, with one by six-inch wood pickets that have no gap between them. Substantial construction of a fence for this purpose also means the erection of a seven-foot chain link fence which includes sight obscuring slats.

"Indoor" or "indoors" means that the structure within which marijuana is being cultivated, must be a private residence or an accessory structure within the meaning of those definitions found elsewhere in this section of Title 19. All cultivation which does not specifically meet the definition of "Indoor" or "Indoors" is considered "outdoor" or "outdoors". The cultivation of marijuana which occurs in a greenhouse or hoop house is considered "outdoor" or "outdoors" cultivation for purposes of this Title.

"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). Legal parcel is not the same as Assessor's Parcel Number (APN). One legal parcel may have multiple APN's. The allowable cannabis activities defined in section 19.040 relate to premises, as defined below, and not individual APN's.

"Licensed Day Care Provider" means a Child Care Center or a Family Child Care Home licensed by the California Department of Social Services.

"Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

"Outdoor" or "outdoors" means any cultivation location that does not specifically meet the definition of "indoor" or "indoors" or is otherwise specifically defined as "outdoor" or "outdoors".

"Premises" shall mean 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 title. Parcels are considered contiguous for purposes of this Title if they touch at any point along their respective boundaries.

"Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

"Private residence" means a lawfully established structure, suitable for human occupancy as required by section 17922 and 17958 of the California Health and Safety Code. A recreational vehicle does not constitute a lawfully established structure for purposes of this Title.

"Public Park" means an area of land designated by any local governmental entity empowered to create a public park as an area to be held open to the public for recreation purposes.

"Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

"Residing on the premises" means that the person cultivating marijuana, whether for medicinal or recreational purposes, must be a legal occupant of a lawfully established structure, suitable for human occupancy as required by section 17922 and 17958 of the California Health and Safety Code, located on the premises upon which the cultivation is occurring. A recreational vehicle does not constitute a lawfully established structure for purposes of this Title.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

"School bus stop" means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233."

Section Four: Section 19.040 of the Lassen County Code is amended to read, in its entirety:

"19.040 Allowable cannabis activities.

- (a) The establishment, maintenance, or operation of any commercial marijuana activity, including, but not limited to, cultivation, manufacture, testing, distribution, dispensing, and sale, which would require a state license to be issued pursuant to the Medical Cannabis Regulation and Safety Act (MCRSA) or the Adult Use of Marijuana Act (Proposition 64), is prohibited within the unincorporated territory of Lassen County and is hereby declared a public nuisance which may be abated or enjoined pursuant to this title.
- (b) The non-commercial cultivation of marijuana in the unincorporated territory of Lassen County, whether for medical or recreational purposes, by any person, regardless of their status as a qualified patient or designated primary caregiver, in excess of the following limits is prohibited and is hereby declared a public nuisance that may be abated or enjoined pursuant to this title:

1. All cultivation, recreational or medical, may only be performed by someone residing on the premises (within the meaning of that definition above) where the cultivation occurs.
2. Allowable indoor cultivation: Marijuana, whether for medical or recreational use, may be cultivated indoors (within the meaning of that definition above) and then subject to the following limitations:
 - a. Not more than six living plants may be cultivated indoors at any one time for one premises.
 - b. The location where the cultivation is to occur shall not be accessible to minors at any time.
3. Allowable outdoor cultivation: No recreational marijuana may be cultivated outdoors. Only medical marijuana may be cultivated outdoors (within the meaning of that definition above) and then subject to each of the following limitations:
 - a. Outdoor cultivation may only occur on a single contiguous 250 square foot area located on the premises. The location at which measurements shall be taken in determining whether such cultivation is within 250 square feet within the meaning of this limitation shall be the interior side of any fence required for "outdoor" cultivation in section 3(b) below.
 - b. Outdoor cultivation shall be fully enclosed by a fence of substantial construction.
 - c. Outdoor cultivation shall be setback from all exterior property lines by at least 50 feet. Such setback distance shall be measured in a straight line from the property line to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.
 - d. There shall be no outdoor cultivation of marijuana, in any amount or quantity, upon any premises located within 1000 feet of any existing school, school bus stop, licensed day care provider, or public park. Such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school, school bus stop, licensed day care provider, or public park is located.
 - e. There shall be no outdoor cultivation on premises which are one acre in size or smaller.
4. All cultivation, indoors or outdoors, medical or recreational, may only be performed by the legal owner of the premises or the legal resident thereof. If the person cultivating the marijuana is not the legal owner of the premises, such person shall possess a notarized consent form from the legal owner consenting

to such cultivation. This consent form shall be at all times kept on the premises where the marijuana is being cultivated and a copy of which shall be made available, upon demand, to any enforcing officer. Lassen County Planning and Building Services Department will make forms available for such purpose.

- (c) Any amendment enacted by the Lassen County Board of Supervisors reflecting a change in the allowable conditions of cultivation pursuant to this Title shall not be applied retroactively.”

Section Five: The Environmental Review Officer finds that this ordinance is not a project under the California Environmental Quality Act (“CEQA”) pursuant to CEQA guidelines sections 15060(c)(3) and 15378, and are otherwise exempt from CEQA pursuant to CEQA guidelines sections 15061(b)(3) and 15308.

Section Six: This ordinance shall become effective thirty (30) days after its date of final adoption. It shall be published in the Lassen County Times, a newspaper of general circulation in Lassen County, within fifteen (15) days of final adoption.


Introduced at a regular meeting of the Board of Supervisors on the 13th day of June, 2017, and passed and adopted by the Board of Supervisors of the County of Lassen, State of California, on the 20th day of June, 2017, by the following vote:

AYES: Supervisors Gallagher, Teeter and Albaugh.

NOES: Supervisor Hemphill.

ABSTAIN: None.

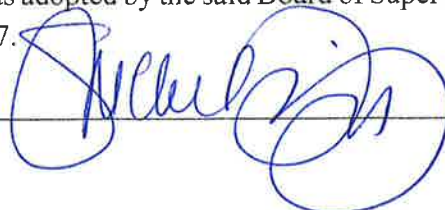
ABSENT: Supervisor Hammond.


AARON ALBAUGH, Chairman
Lassen County Board of Supervisors

ATTEST:
JULIE BUSTAMANTE
Clerk of the Board



I, Michele Yderraga, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing ordinance was adopted by the said Board of Supervisors at a regular meeting thereof held on the day of June 20, 2017.



Deputy Clerk of the County of Lassen
Board of Supervisors