

**ORDINANCE NO. 785**

**AN ORDINANCE OF THE COLUSA COUNTY BOARD OF SUPERVISORS AMENDING CHAPTER 11 OF THE COLUSA COUNTY CODE TO PERMIT LIMITED MARIJUANA CULTIVATION IN ACCORDANCE WITH THE ADULT USE OF MARIJUANA ACT (PROPOSITION 64) AND TO PROHIBIT MARIJUANA DISPENSARIES, DELIVERY, AND SALES IN THE UNINCORPORATED AREAS OF THE COUNTY**

The Board of Supervisors of the County of Colusa ordains as follows:

SECTION 1

Chapter 11 of the Colusa County Code is amended to read as shown in Exhibit A to this ordinance.

SECTION 2

The provisions of Chapter 11 as shown in Exhibit A to this ordinance are severable and if any provision of Chapter 11 or its application in a particular circumstance is held invalid, the remainder of the Chapter, including the application of such part or provision in another circumstance, shall not be affected and shall continue in full force. The Board of Supervisors declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase in Chapter 11 irrespective of the fact that any one, or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION 3

This ordinance is exempt from the California Environmental Quality Act ("CEQA") because it is not a project under CEQA. Moreover, if it were deemed a project, it would be categorically exempt under section 15321 of Title 14, Article 7 of the California Code of Regulations because it amounts to an action by an agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency. Furthermore, this ordinance is not subject to CEQA under the following sections of Title 14, Article 7 of the California Code of Regulations:

1. Section 15061(b)(3), because there is no possibility the activity in question may have a significant effect on the environment;
2. Section 15307, because it regulates activities to assure the maintenance, restoration, or enhancement of natural resources; and
3. Section 15308, because it regulates activities to assure the maintenance, restoration or enhancement of the environment.

SECTION 4

This ordinance shall become effective thirty (30) days after its passage. It shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Colusa, State of California, within fifteen (15) days after its passage.

Introduced at a regular meeting of the Board of Supervisors held on the 18th day of April, 2017 and passed and adopted by the Board of Supervisors of the County of Colusa, State of California, on the 2nd day of May 2017, by the following roll call vote:

**AYES:** John D. Loudon, Kim Dolbow Vann, Kent S. Boes, and Gary J. Evans.

**NOES:** None.

**ABSENT:** Denise J. Carter.

  
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Gary J. Evans, Chairperson  
Colusa County Board of Supervisors

**ATTEST:** Wendy G. Tyler, Clerk to the  
Board of Supervisors

By,   
\_\_\_\_\_  
Patricia Rodriguez, Deputy Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Marcos A. Kropf, County Counsel

# **EXHIBIT A**

## **Chapter 11**

### **MARIJUANA CULTIVATION, RELATED POSSESSION, AND SALES**

#### **11-1 Authority and title.**

The board of supervisors for the County of Colusa enacts this chapter under the authority granted to the County by Article XI, Section 7 of the California Constitution, Health and Safety Code Section 11362.83, Government Code Section 25845, Sections 19315 and 19316 of the Medical Marijuana Regulation and Safety Act (AB 266) and the Adult Use of Marijuana Act (Proposition 64).

#### **11-2 Findings and purpose.**

The Colusa County board of supervisors finds and declares the following:

(a) The purpose and intent of this chapter is to regulate marijuana cultivation in a manner consistent with state and federal law; promote the health, safety and general welfare of the residents in the unincorporated territory of Colusa County; and prevent potential adverse impacts from marijuana cultivation.

(b) In 1996 California voters approved Proposition 215, the Compassionate Use Act of 1996 (CUA), codified as California Health and Safety Code Section 11362.5. The CUA is limited in scope. It only provides a limited immunity and defense from criminal prosecution for certain crimes related to the possession and cultivation of marijuana by qualified patients and their primary caregivers. The CUA does not supersede legislation prohibiting persons from engaging in conduct that endangers or affects others. Additionally, the CUA does not create an affirmative right to possess or cultivate marijuana.

(c) In 2004 the Legislature enacted Senate Bill 420, the Medical Marijuana Program (MMP), codified as California Health and Safety Code Section 11362.7 et seq. The MMP was meant to clarify the scope of the CUA and provide qualifying patients and primary caregivers, who collectively or cooperatively cultivate marijuana for medical purposes, a limited defense to certain state criminal statutes. The MMP does not create an affirmative right to possess or cultivate marijuana.

(d) On October 9, 2015, the Governor signed into law AB 266, the Medical Marijuana Regulation and Safety Act (MMRSA). Generally, the MMRSA provides for the licensure and

regulation of medical marijuana. It also establishes the Bureau of Medical Marijuana Regulation. The MMRSA does not create an affirmative right to possess or cultivate marijuana.

(e) Effective November 9, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA legalizes specified personal use and cultivation of marijuana for adults 21 years of age or older under State law. AUMA authorizes the County to enact and enforce reasonable regulations regarding the possession and cultivation of marijuana within the County.

(f) Neither the CUA, MMP, MMRSA, or AUMA gives anyone the right to cultivate marijuana anywhere they choose or free of local regulation. Health and Safety Code Section 11362.5(b)(2) specifically provides that the CUA does not supersede any legislation intended to prohibit conduct that endangers others. Further, Health and Safety Code Section 11362.83 expressly allows counties to adopt and enforce ordinances that are consistent with the MMP. Additionally, Section 19315 of the MMRSA specifically provides that the MMRSA shall not be interpreted to supersede or limit local ordinances. Similarly, Section 19316 of the MMRSA affirms the right of the county to adopt ordinances regulating marijuana cultivation. Health and Safety Code Section 11362.2 also provides that the County may enact and enforce reasonable regulations regarding the possession or cultivation of marijuana.

(g) Regardless of state law, the possession and cultivation of marijuana, whether used for medical purposes or not, is unlawful under the Federal Controlled Substances Act (21 U.S.C. Section 801 et seq.). Marijuana is classified as a Schedule I drug. As a Schedule I drug, marijuana is deemed under the law to have a high potential for abuse, no currently accepted medical use, and it has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute, or dispense marijuana. The Federal Controlled Substances Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation, or possession of marijuana for medical or any other purpose.

(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 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. Nothing in the Guidelines or any other provision of law mandates local governments, such as Colusa County, to allow, sanction or permit the establishment or operation of facilities cultivating or dispensing marijuana within their jurisdiction whether for medical or any other purpose.

(i) The unregulated cultivation of marijuana in the unincorporated area of Colusa County can adversely affect the health, safety, and well-being of its residents. The regulation of marijuana cultivation in Colusa County is proper and necessary to avoid the risks of criminal activity,

degradation of the natural environment, malodorous smells, and to preserve the use of limited water resources.

(j) The cultivation of marijuana increases the risk of trespassing, burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes at locations where it is cultivated. Similarly, locations where cultivation is taking place are also more prone to be attractive nuisances and interfere with the quiet enjoyment by other property owners in the area, due to offensive odors and increased growing activities at various times of the year.

(k) Cultivation of marijuana is often associated with violations of local, state and federal environmental laws and pesticide regulations. These violations threaten harm to local waterways, groundwater quality, and endanger the public health and safety.

(l) Indoor marijuana cultivation presents potential health and safety risks to those living within a structure where marijuana is grown, especially children. These risks include, but are not limited to, potential property crimes, increased risk of fires from grow light systems, and exposure to fertilizers, pesticides, and anti-fungus agents.

(m) The United States Bureau of Reclamation, which controls a significant portion of the water used by the residents of Colusa County, prohibits the use of any federally controlled water for the cultivation of marijuana crops.

(n) Water for marijuana cultivation may be illegally diverted from local creeks, streams, and rivers. These diversions unreasonably deprive downstream users of beneficial water sources. Such diversions may also impact water supplies, harm ecosystems, and negatively affect threatened or endangered species.

(o) There are no fertilizers or pesticides approved for use in marijuana cultivation. The unapproved use of such fertilizers and pesticides may unreasonably increase the concentration of such chemicals in storm water runoff, impacting local creeks, streams and rivers.

(p) The limited immunity from certain state marijuana laws does not confer the right to create or maintain a public nuisance. Similarly, a limited immunity does not abrogate the right and duty of the county to regulate marijuana cultivation in the unincorporated portions of the county. Through the adoption of this chapter, the county aims to prevent the adverse effects caused by the unregulated cultivation of marijuana in the county.

### **11-3 Definitions.**

(a) "Accessory Structure" means a structure legally permitted under the Colusa County Code that is located on a parcel of property that includes a legally established and inhabited residence. Any accessory structure used for marijuana cultivation under this Chapter must have properly permitted power and water sources, must be secured against unauthorized entry and be accessible

only through one or more lockable doors, must be constructed of solid opaque, non-translucent materials that cannot easily be broken through (such as two-inch by four-inch or thicker studs overlain with three-eighths-inch or thicker plywood or equivalent materials), and must have a complete roof enclosure. Plastic sheeting, regardless of gauge, or similar products do not satisfy this solid material requirement and greenhouses are not permitted under this definition of an accessory structure.

(b) “County” means the county of Colusa, or the unincorporated area of the county of Colusa as required by the context.

(c) “Cultivation” means the planting, growing, harvesting, drying, processing, trimming, or storage of marijuana, in any amount, at any location, in any structure or vehicle, whether indoor or outdoor.

(d) “Enforcing officer” means the sheriff or his or her designees authorized by the sheriff to enforce this chapter.

(e) “Marijuana” means all parts of the plant genus Cannabis, including its different species or strains, whether growing or not, the resin, or any substance extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, resin, or any substance extracted from the plant and shall include but is not limited to marijuana as defined in California Health and Safety Code Section 11018.

(f) “Residence” means a private parcel of land with a habitable and properly permitted structure, not a vehicle or trailer, that complies with all state and County residency requirements, and is occupied by a full time permanent resident age 21 or older.

#### **11-4 Application.**

The provisions of this chapter shall apply to activities and property in the unincorporated territory of Colusa County.

#### **11-5 Sales, Dispensaries, and Delivery**

The following activities are prohibited under this Chapter and deemed a public nuisance:

(a) The sale of marijuana in any amount;

(b) The operation or establishment of a dispensary or storefront type facility, business, or operation, to distribute or dispense marijuana; and

(c) The delivery of marijuana through a delivery service such as a mobile delivery service or other means.

#### **11-6 Requirements for Marijuana Cultivation and Possession.**

Marijuana cultivation in the County is allowed only under the following conditions:

(a) Cultivation for personal use is limited to individuals age 21 or older. The individual must be a full time permanent resident of the Residence at which the cultivation takes place. Cultivation for any other purpose is prohibited.

(b) Marijuana cultivation is only allowed in a secured, permitted Accessory structure, not an inhabited dwelling, located on the same legal parcel as the Residence.

(c) Accessory Structures must be legally permitted through the Colusa County Planning & Building Department. Legally permitted means constructed pursuant to all required permits including but not limited to a building, electrical, and/or plumbing permit and building, electrical and/or plumbing permit final from the County Building Unit. Should the accessory structure not require a building permit because the total area of the structure as determined by the roofline is equal to or less than one-hundred-and-twenty (120) square feet, all other required permits including but not limited to an electrical and/or plumbing permit and an electrical and/or plumbing permit final from the county building Unit must still be obtained. An Accessory structure for marijuana cultivation must also meet other requirements including but are not limited to odor control filtration, ventilation systems, a water source and other utility and support systems that the County deems in its sole discretion to be required pursuant to State and County codes.

(d) Accessory structures used for marijuana cultivation must be permitted and inspected prior to any cultivation.

(e) The Accessory structure cannot be located in any front yard setback area and cannot be located between the residence on the parcel and the front yard property line, and must be set back from the side and rear property line at least ten (10) feet.

(f) The Accessory structure must be locked and secured to the extent necessary to prevent unauthorized access or access to anyone under the age of 21.

(g) Marijuana plants or products must not be visible from the street or neighboring properties.

(h) Marijuana cultivation and possession is limited to no more than six plants per Residence, no matter the number of occupants at a Residence.

(i) Marijuana produced by the plants in excess of 28.5 grams must be kept in an Accessory structure.

#### **11-7 Public nuisance.**

(a) The cultivation of marijuana in Colusa County must comply with the requirements in this chapter or it is deemed a public nuisance.

(b) Any person owning, leasing, occupying, or having charge or possession of any real property within the county who causes, allows, or permits such property to be used for the cultivation of marijuana in violation of this chapter is deemed to be maintaining a public nuisance.

**11-8 Notice to abate unlawful marijuana cultivation.**

(a) Whenever the enforcing officer determines that there exists a violation of this chapter, the enforcing officer is authorized to provide the person(s) who the enforcing officer believes is violating this chapter, including the property owner(s) and occupants of real property where a violation is occurring, with a notice to abate unlawful marijuana cultivation.

(b) Notwithstanding any other provision of this chapter or the Colusa County Code, the enforcing officer and the County are not precluded from taking any other enforcement action, without notice, consistent with and in response to violations of state law.

**11-9 Contents of notice to abate unlawful marijuana cultivation.**

A notice to abate unlawful marijuana cultivation shall be in writing and include the following:

(a) The name of the property owner(s), as well as any known tenant, lessee, or occupant of the property.

(b) The address or location of the violation;

(c) A general description of the violation;

(d) A statement that the unlawful marijuana cultivation must be abated within five (5) calendar days after the date that the notice is served;

(e) The date of service;

(f) A statement that the violation determination may, within five (5) calendar days after the date the notice was served, be appealed by providing the clerk of the board of supervisors with a request in writing for a hearing to appeal the determination of the enforcing officer;

(g) A statement that unless an appeal hearing is requested within the time prescribed in the notice, the enforcing officer will abate the nuisance at the expense of those determined by the enforcing officer to have violated this chapter. It shall also state that the abatement costs, including administration costs, may be made a special assessment added to the county assessment roll and become a lien on the real property where the violation has occurred, on the real property owned by those persons violating this chapter, or be placed on the unsecured roll.

**11-10 Service of notice to abate unlawful marijuana cultivation.**

The notice to abate may be served in the following ways or in combination:



(a) By certified mail to the property address and to any additional address on file with the county assessor's office.

(b) By posting the notice on the property where the violation is occurring in a visible location, so long as the notice is also served by certified mail to the legal owner of the property as determined by the records of the county assessor.

### **11-11 Appeal hearing.**

(a) Any person served with a notice may appeal the determination of the enforcing officer.

(b) An appeal under this section may be commenced by filing a written request for hearing with the clerk of the board of supervisors within five (5) calendar days after the date the notice of violation was served. The five-day limitation is jurisdictional and may not be waived. The request shall include a statement of facts supporting the appeal.

(c) Upon timely receipt of a written request for hearing, the clerk shall set a hearing not less than five (5) calendar days nor more than twenty (20) calendar days from the date the request was filed. Notice of the hearing shall be served via certified mail by the clerk and posted on the property by the enforcing officer.

(d) Hearings will be conducted by a hearing officer designated by the board of supervisors and need not be conducted according to the strict technical rules of evidence concerning witnesses and hearsay, although the hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(e) The hearing officer may continue the appeal hearing upon a showing of good cause by the requesting party. Only one continuance may be granted.

(f) The hearing officer shall consider the matter de novo and may affirm, reverse or modify the determination made by the enforcement officer. The decision of the hearing officer shall be final and conclusive.

(g) The decision of the hearing officer shall be served by certified mail on all interested parties within seven (7) calendar days of the hearing.

(h) The decision of the hearing officer shall be served by certified mail to the property address, any additional address of the property owner listed with the county assessor's office, counsel of record for any party, the Sheriff, and the County Counsel's office.

### **11-12 Administrative Penalties.**

In addition to any other remedies provided by the County Code or state law, the following civil penalties are imposed for each violation under this Chapter: Five hundred dollars (\$500.00) per

day from the date of the notice to abate the unlawful marijuana cultivation is posted on the property, and continuing for each day that violation continues to exist. The property owner and any lessee, tenant, or occupant will be jointly and severally liable for any violations under this Chapter.

#### **11-13 Costs.**

In any action brought to enforce this chapter, whether by administrative proceedings, judicial proceedings or summary abatement, each person who violates this chapter shall be liable to the county for all costs incurred by the county, including but not limited to administrative costs, enforcement costs, investigation costs, costs of abatement, costs to compel abatement, costs for appeal, and any collection costs. These costs shall include reasonable attorneys' fees to the prevailing party in those actions or proceedings in which the county elects, at the initiation of the action or proceeding, to seek recovery of its attorneys' fees.

#### **11-14 Special assessments and liens.**

The board of supervisors may order that costs incurred by the county as provided for in section 11-13 be placed upon the county tax roll by the county auditor as a special assessment against any respective real property, or placed on the unsecured roll.

#### **11-15 Summary abatement.**

Notwithstanding any other provision in this chapter, when any unlawful marijuana cultivation is an immediate threat to the public health or safety, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance without notice.