

ORDINANCE NO. SCC 2014-02

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
AMENDING SECTION 17.88.320, *MEDICAL MARIJUANA CULTIVATION*, AND
SECTION 17.88.140, *ACCESSORY BUILDINGS AND USES*,
OF CHAPTER 17.88, *SPECIAL USES*,
OF THE SHASTA COUNTY CODE**

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

SECTION I.

Section 17.88.320 of the Shasta County Code is amended in its entirety as follows:

17.88.320 MEDICAL MARIJUANA CULTIVATION

A. Legislative Findings.

The Board of Supervisors finds as follows:

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act" or CUA).
2. The intent of the Compassionate Use Act was to enable seriously ill Californians to obtain Marijuana for appropriate medical purposes and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes. The Compassionate Use 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." The ballot arguments supporting the Compassionate Use Act expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
3. On January 1, 2004, Senate Bill 420, codified as Health and Safety Code sections 11362.7 *et seq.* and entitled "The Medical Marijuana Program (MMP) Act," and as subsequently amended, became effective to clarify the scope of the Compassionate Use Act, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.
4. The County of Shasta has adopted a Zoning Plan identified as Title 17 (Zoning) of the Shasta County Code.

5. The County's unique geographic and climate 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. Cultivation has occurred in the rural and also in more residential and town center areas of unincorporated portions of the county. Marijuana growers can achieve a high per-plant yield with high economic value because of the County's favorable growing conditions.
6. Shasta County and other public entities have reported adverse impacts from Medical Marijuana Cultivation, including, but not limited to, disagreeable odors, negative effects on the environment, unsanitary conditions, negative effects on physical, mental and community health, violation of building codes, increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
7. The creation of persistent strong odors as Marijuana plants mature and flower is offensive to many people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable Marijuana plants and creating an increased risk of crime.
8. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, churches, and other similar locations. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that children will be involved or endangered.
9. The indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.
10. Comprehensive restriction of premises used for marijuana cultivation is proper and necessary to address the risks and adverse impacts as stated herein, 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.
11. The County of Shasta may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

12. Preemption of the County of Shasta's authority will not be implied when the legislative scheme of the law, including the Medical Marijuana Program Act and the Compassionate Use Act, either permits or recognizes local regulation.
13. The Medical Marijuana Program Act, at Health and Safety Code section 11362.768, authorizes the County of Shasta to adopt an ordinance restricting the location and establishment of Medical Marijuana cooperatives, collectives, dispensaries, operators, establishments, and providers.
14. The Medical Marijuana Program Act, at Health and Safety Code section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with the Medical Marijuana Program Act, and additionally authorizes the County of Shasta to adopt an ordinance regulating the location, operation, and establishment of Medical Marijuana cooperatives and collectives.
15. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither 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 & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing 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 . . ."
16. On December 13, 2011, the Board of Supervisors adopted Ordinance No. SCC 2011-05 to regulate medical marijuana cultivation. The provisions of Ordinance No. SCC 2011-05 have proven to be inadequate to control the negative impacts of marijuana cultivation. Since the adoption of Ordinance No. SCC 2011-05, there has been increased Marijuana Cultivation throughout the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation, based on parcel size, have proven cumbersome and problematic to administer and enforce. For example, the original limits were based on square feet of total Cultivation area, leading to uncertainty in measurement when the plants were not cultivated in a defined contiguous area, and the need for multiple inspections throughout the grow season. The revised provisions contained in this ordinance are intended to address the aforementioned concerns, and simplify the regulations to be more readily understood by those affected, to expedite the code enforcement process and to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers.

B. Intent.

1. The Shasta County Board of Supervisors hereby intends to restrict the Cultivation of Medical Marijuana including without limitation, restrictions as to location of Cultivation, the number of Marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation as stated herein, while considering the desires of Qualified Patients and their Primary Caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare. Nothing in this Section shall be construed to authorize any use, possession, Cultivation, or distribution of Marijuana for non-medical purposes or that is in violation of state or federal law.
2. This Section is established to restrict Medical Marijuana Cultivation in a manner that mitigates potential impacts on properties and persons, and that is in conformance with the provisions of California Health and Safety Code sections 11362.5 through 11362.83.
3. All references to statutes and ordinances in this Section refer to statutes and ordinances as they currently exist and as they may be amended.

C. Definitions.

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

1. **“Child Care Center”** means any licensed child care center, day care center as defined in Shasta County Code Section 17.02.165, large day care home as defined in Shasta County Code Section 17.02.170, small day care home as defined in Shasta County Code Section 17.02.175, childcare home, or any preschool.
2. **“Church”** is defined in Shasta County Code Section 17.02.145.
3. **“Cultivation” or “Cultivate”** 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.
4. **“Enforcing Officer”** is defined in Shasta County Code Section 17.94.060(C)(1).
5. **“Greenhouse”** as used in this Section means an accessory structure to a Residence located on the same Premises, legally established with all required permits approved, constructed primarily of translucent glass or glass-like material (or other similar material approved by the Director of Resource Management),

completely enclosed with one or more secure locking doors as the only means of ingress and egress, where plants are grown.

6. **“Fence”** is defined in Shasta County Code Section 17.02.222 and is further defined as a wall or a barrier connected by boards, masonry, rails, panels, or other materials approved by the Director of Resource Management for the purpose of enclosing space or separating Parcels of real property. For purposes of this Section, the term “Fence” does not include retaining walls, tarpaulins, bamboo, or similar screening or scrap material.
7. **“Indoor” or “Indoors”** means within a fully enclosed and secure accessory structure to a Residence located on the same Premises that complies with Title 16 (Buildings and Construction) of the Shasta County Code with all required permits approved, 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” × 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
8. **“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) or is otherwise established by law.
9. **“Marijuana”** shall have the same meaning as that set forth in Health and Safety Code section 11018. Marijuana, Medical Marijuana, and the Cultivation thereof, as defined in this Section and in Section 17.88.310 of the Shasta County Code, shall not be considered Agriculture or Agricultural Processing as defined in Sections 17.02.055 and 17.02.057, respectively, of the Shasta County Code.
10. **“Marijuana plant”** means any mature or immature marijuana plant, or any marijuana seedling.
11. **“Medical Marijuana”** shall mean Marijuana recommended by a licensed physician, in accordance with California Health and Safety Code section 11362.5 through section 11362.83, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.
12. **“Outdoor” or “Outdoors”** means any location that is not “Indoor” or is not in a “Greenhouse” as defined herein.

13. **“Parcel”** means a “Legal Parcel” as defined herein.
14. **“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 Section.
15. **“Primary Caregiver”** shall have the same definition as Health and Safety Code section 11362.7(d).
16. **“Public Library”** means a public facility in which literary, musical, artistic, or reference materials are kept for reading, reference or lending.
17. **“Public Park”** means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.
18. **“Qualified Patient”** shall have the same definition as Health and Safety Code sections 11362.7(c) and (f).
19. **“Residence”** shall mean a fully enclosed structure, legally established with all required permits approved, used for human occupancy and shall have the same meaning as “domicile.”
20. **“Residential Accessory Building”** is defined in Shasta County Code Section 17.02.125, and as used herein includes the terms “residential accessory structure” and “accessory structure.”
21. **“School”** is defined at Shasta County Code Section 17.02.500.
22. **“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, or School pupil activity buses, as defined in Vehicle Code section 546.
23. **“School Evacuation Site”** means any location designated by formal action of the governing body, superintendent, or principal of any School as a location to which juveniles are to be evacuated, or are to assemble, in the event of an emergency or other incident at the School.
24. **“Sheriff” or “Sheriff’s Office”** means the Shasta County Sheriff’s Office or the authorized representatives thereof.
25. **“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.

D. Nuisance Declared; Cultivation Restrictions.

1. The Cultivation of Marijuana plants, Indoors, Outdoors, in a Greenhouse, or combined, on any Parcel or Premises, not in conformance with the provisions of this Section is hereby declared to be a public nuisance that may be abated in accordance with Chapter 8.28 (Nuisances) of the Shasta County Code, Shasta County Code Section 17.94.060, and by any other means available by law. The provisions of Chapter 17.90 (Nonconforming Uses) of the Shasta County Code shall not apply to the Cultivation of Marijuana plants hereby declared to be a public nuisance.
2. Cultivation within a Residence or any other structure used or intended for human occupancy is prohibited.
3. Outdoor Cultivation on any Premises is prohibited.
4. Cultivation may only occur on a Premises within a detached residential accessory structure affixed to the real property (a) that meets the definition of "Indoor," or "Greenhouse," (b) that is located on the same Premises as the Residence of a Qualified Patient(s) or a Primary Caregiver(s), and (c) that complies with all of the provisions of the Shasta County Code relating to accessory structures including, but not limited to, the County's General Development Standards in Chapter 17.84, and Section 17.88.140 of the Shasta County Code. Where the provisions of this Section are more restrictive than Shasta County Code Chapter 17.84 and Section 17.88.140, the provisions of this Section shall govern.
5. Accessory structures used for Cultivation shall meet all of the following criteria:
 - a. The accessory structure shall be legally constructed with all applicable permits including, but not limited to, grading, structural, electrical, mechanical, and plumbing approved by the applicable authorities prior to any Cultivation activity. The conversion of any existing accessory structure, or portion thereof, for Cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable authorities prior to any Cultivation.
 - b. The accessory structure shall not be located in the front yard setback area of the Parcel and shall maintain a minimum building setback of 12 feet from all side and rear property lines. Distance shall be measured in a straight line from either (1) the nearest exterior wall of the Indoor

- Cultivation structure or (2) the nearest Fence surrounding the Greenhouse cultivation structure, as applicable, to the nearest property line.
- c. The maximum electrical panel for the Cultivation area shall be 50 amps. Except for temporary use in case of emergency power loss, the use of generators to supply power to any system or activity associated with Cultivation is prohibited.
 - d. Light systems associated with Indoor Cultivation shall not exceed 2000 watts total and shall be shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure. Lighting systems shall conform to all applicable building and electrical codes. Grow light systems within a Greenhouse are prohibited.
 - e. The accessory structure shall be equipped with odor control filtration and ventilation system(s) adequate to prevent an odor, humidity, or mold problem on the Premises or adjacent Parcels,
 - f. The accessory structure shall have locking doors and a working security system which shall consist of a standard audible residential alarm of at least 90 dBA, but not exceeding 110 dBA.
 - g. If the accessory structure is a Greenhouse, for security and visual screening purposes, it shall additionally be surrounded by a secure solid minimum six-foot high fence located within ten feet of the Greenhouse, and equipped with a lockable gate.
6. Cultivation of more than twelve (12) Marijuana plants on any Premises is prohibited. The foregoing limitation shall be imposed regardless of the number of Qualified Patients or Primary Caregivers residing at the Premises or participating directly or indirectly in the Cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the Primary Caregiver(s) for Qualified Patients or that such person(s) are collectively or cooperatively cultivating marijuana.
7. Cultivation of Marijuana is prohibited on any Premises located within the following areas:
- a. Within 1,000 feet of a School, School Bus Stop, School Evacuation Site, Child Care Center, Public Park, Public Library, Church, or Youth-oriented Facility. Distance shall be measured in a straight line from either (1) the nearest exterior wall of the Indoor Cultivation structure or (2) 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, Child Care Center, Public Park, Public Library, Church, or Youth-oriented Facility.

- b. In any location where the Marijuana would be visible from any public right-of-way or publicly traveled private roads at any stage of their growth.
8. All persons and entities engaging in the Cultivation of Marijuana shall (a) have a legal water source on the Premises, (b) not engage in unlawful or unpermitted surface drawing of water for such Cultivation, and (c) not permit illegal discharges of water from the Premises.
9. 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.
10. 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 the Shasta County Code.
11. Unless the person(s) cultivating Marijuana on any parcel is/are the sole legal owner(s) of the parcel, such person(s) shall obtain a notarized letter(s) from all of the legal owner(s) indicating that all of the legal owner(s): (a) has/have reviewed and understand(s) Section 17.88.320 of the Shasta County Code related to Medical Marijuana Cultivation, and (b) consent(s) to the cultivation of Marijuana on the parcel. A copy of the notarized letter(s) must be kept available to immediately present to enforcing officers and law enforcement officers upon request. The Department may prescribe forms for such letters. Cultivation in the absence of such notarized written consent is prohibited.
12. The name and contact information of each Qualified Patient and Primary Caregiver residing on the Premises where Medical Marijuana Cultivation is located, shall be immediately available at the Premises and provided to enforcing officers and law enforcement officers upon request.
13. The name and contact information of the physician or physicians recommending Medical Marijuana to the Qualified Patient or state issued medical marijuana identification card (as defined in Health and Safety Code section 113627.(g)) shall be immediately available on the Premises and provided to enforcing officers and law enforcement officers upon request.

E. Enforcement.

Marijuana Cultivation shall be subject to Chapter 8.28 (Nuisances) of the Shasta County Code and Shasta County Code Chapter 17.94. Furthermore, in the performance of his or her functions, the Enforcing Officer is authorized to request and inspect any evidence that serves to confirm compliance with any or all provisions of this Section 17.88.320 of the Shasta County Code including, but not limited to the following: (1) original documents or other evidence establishing the Qualified Patient or Primary Caregiver status of the person or persons involved in the Cultivation; (2) the legal Residence of the person or persons involved in the Cultivation; (3) verification of the place of residence for all Qualified Patients for whom a Primary Caregiver is cultivating, pursuant to Health and Safety Code section 11362.7(d).

F. Non-exclusive remedy.

This Section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or to enforce the provisions of the Shasta County Code.

G. Liability.

The provisions of this Section shall not be construed to protect Qualified Patients, Primary Caregivers, or any other person from prosecution pursuant to any laws that may prohibit the Cultivation, sale, distribution, possession, and/or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Moreover, Cultivation, sale, possession, distribution, and use of Marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to, and does not authorize conduct or acts that violate federal law and does not protect any of the above described persons from arrest or prosecution under those federal laws. Qualified Patients, Primary Caregivers, and any other persons assume any and all risk and any and all liability that may arise or result under state and federal laws from the Cultivation, sale, possession, distribution, and/or use of Medical Marijuana. Further, to the fullest extent permitted by law, any actions taken under the provisions of this Section by any public officer or employee of the County of Shasta or Shasta County itself, shall not become a personal liability of such person or a liability of the county.

H. Misdemeanor Penalty

Any person or entity violating any provision of this Section 17.88.320 of the Shasta County Code shall be guilty of a misdemeanor.

SECTION II.

Section 17.88.140 of the Shasta County Code is amended in its entirety as follows:

17.88.140 RESIDENTIAL ACCESSORY BUILDINGS.

- A. Residential accessory buildings are buildings which are subordinate to and commonly associated with a residence, including, but not limited to: private garages, carports, covered awnings, greenhouses, and private storage buildings. As used in this Section residential accessory buildings include the terms residential accessory structure and accessory structure. This Section does not apply to family care residences, senior citizen residences, guest houses, servant's quarters, or any other buildings permitted and approved for human occupancy, or to agricultural buildings as defined in Section 17.02.105.
- B. Residential accessory structures may be permitted in any district that permits a residence, unless otherwise specified by a particular district, provided that:
1. In districts which require an administrative or use permit for a residence, the administrative or use permit for the residence is issued; and
 2. The accessory structure(s) comply with the following criteria and all required permits are approved.
 - a. On property with a legally established residence, the combined total floor area of all such accessory structures, attached and detached, does not exceed 2,500 square feet excluding 600 square feet of garage space when attached to and part of the residence, and excluding up to two legal detached structures less than 120 square feet of floor area each, unless an Administrative Permit is first approved.
 - b. On property where no legal residence has been established, accessory structures may be permitted, provided that an agreement is signed by the property owner and recorded prior to issuance of building permits, acknowledging that the accessory structures cannot and will not be used for human occupancy, or for any purpose in violation of the particular zone district or any other regulatory or prohibitory provision of the Shasta County Code; and further provided that:
 - i. The combined total floor area of all accessory structures, including structures less than 120 square feet, shall not exceed 1,000 square feet.

- ii. If a legal residence will be constructed concurrently on the property and all required permits for the residence have been approved, the combined total floor area of all accessory structures may exceed 1,000 square feet, subject to the permitting requirements and size limitations of sub-section 2(a), and provided that the final inspection of all such accessory structures shall only occur after or at the same time as the Certificate of Occupancy is issued for the residence.

SECTION III.

The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including, but not limited to, by direct referral to the County Counsel as appropriate for judicial enforcement), and 15303 (new construction or conversion of small structures, e.g., a residential accessory building). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

SECTION IV.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION V.

All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby repealed. The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

SECTION VI.

This ordinance shall take effect and be in full force and effect 30 days after its passage. The Clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 28th day of January, 2014 by the Board of Supervisors of the County of Shasta by the following vote:

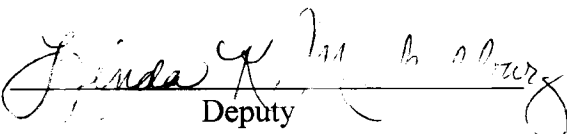
AYES: Supervisors Kehoe, Moty, Giacomini, Schappell, and Baugh
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



LES BAUGH, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: 
Deputy