ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_\_

 **AN ORDINANCE OF THE COUNTY OF SISKIYOU**

 **AMENDING**

 **SECTIONS 20, 90 AND 100 OF CHAPTER 14 OF TITLE 10**

 **OF THE SISKIYOU COUNTY CODE**

 **REGARDING PERSONAL MARIJUANA CULTIVATION**

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

SECTION I: Section 20, of Chapter 14 of Title 10 is hereby amended to read as follows:

“10-14.020 – Definitions

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

"Church" means a building, together with its accessory buildings and uses, maintained and controlled by a body organized to conduct religious worship and used primarily for religious worship and related activities.

"Collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by agreement in order to cooperatively cultivate marijuana for medical purposes. The term "collective" shall include "cooperative" unless the context clearly indicates otherwise.

"County Building Official" means the Deputy Director of Building for the Siskiyou County Community Development Department.

"Cultivation" means the planting and growing of one or more marijuana plant(s) or any part thereof.

"Director" means the Director of the Siskiyou County Community Development Department.

"Department" means the Siskiyou County Community Development Department.

"Enforcing officer" means the Director of the Siskiyou County Community Development Department or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this chapter.

"Fence" means a barrier constructed of any materials or combination of materials of sufficient strength and dimension to prevent unauthorized entry. The term "fence" does not include bushes, hedgerows, plastic sheeting, cloth material (tarpaulins), or retaining walls.

"Greenhouse" means, for purposes of this chapter, an accessory structure to a residence located on the same premises, legally established with all required permits approved, secure from unauthorized entry and completely enclosed with one or more secure locking doors as the only means of ingress and egress, where plants are grown.

"Harvest" means the drying, processing, or storage of marijuana.

"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).

"Legally established residence" means a structure designed, approved, and maintained for permanent human habitation pursuant to Title 24 or Title 25 of the California Code of Regulations or constructed prior to adoption of the California Building Standards Code by the County of Siskiyou. "Legally established residence" does not include a structure that has been deemed substandard by the County Building Official or his/her authorized agents.

"Marijuana" or "cannabis" is used herein interchangeably and means any part of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" or "cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Marijuana" or "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" or "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

"Outdoors" means any location that is not within a private residence or a fully enclosed and secure accessory structure or greenhouse as defined herein.

"Person" means any person, firm, company, corporation, partnership, association, public corporation, political subdivision, city, county, district in the County of Siskiyou, the State of California, or the United States of America, or any department or agency of any thereof, or other entity, which is recognized by law as the subject of rights or duties, unless this Code expressly provides otherwise.

"Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

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

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling as defined in Health and Safety Code section 11362.2(b)(5).

"Property owner" means the owner or owners of the subject property, or his, her or their agent or agents, as shown on the last equalized assessment roll or as otherwise known;

"Public library" means a public facility in which literary, musical, artistic, or reference materials are kept for reading, reference or lending.

"Public park" means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.

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

"Responsible party" means:

(1) Each Person, other than a minor, who commits or causes a violation of any provision of this Code to occur, exist, or continue;

(2) Each Person who is the parent or legal guardian of the minor person who commits or causes a violation of any provision of this Code to occur, exist, or continue;

(3) Each Property owner or other Person who, although not a Property owner, nevertheless has a legal right or legal obligation to exercise possession and control over any parcel of real property located within the unincorporated area of the County of Siskiyou, commits, causes, or otherwise allows the violation of any provision of this Code to occur, exist, or continue on such parcel; and

(4) In addition to the business entity itself, each Person who is an owner of that business entity in those cases in which the commission, occurrence, existence, or continuation of the violation of any provision of this Code is most reasonably attributable to that business entity and not to an employee of that business entity.

(5) For purposes of notice and hearing on nuisance abatement, the term “Responsible party” shall mean the Property owner and occupant of the property that is subject to the nuisance abatement case.

"School" means a place for systematic instruction in any branch or branches of knowledge, including public, parochial and nonprofit elementary or secondary schools, attendance at which satisfies the requirements of the Compulsory Education Law (Education Code Section 48200 et seq.).

"Youth oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a child care center.

SECTION II: Section 90, of Chapter 14 of Title 10 is hereby amended to read as follows:

“Sec. 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.~~ Any and all notices, findings and orders required by this chapter may be served by any of the following methods:

 (1) By personal service on the Responsible party.

(2) By first class and certified mail, postage prepaid, return receipt requested, to the Responsible party at the address shown on the last available equalized secured property tax assessment roll for the property on which the violation occurred or exists, or any other address of each Responsible party otherwise known to the Enforcing officer, and by posting in a prominent and conspicuous place on the property at which the violation occurred or exists or abutting public right-of-way; however, if access is denied because a common entrance to the property is restricted by a locked gate or similar impediment, the property may be posted at that locked gate or similar impediment. Service by certified mail and posting shall be deemed complete on the date a notice, finding, or order has been both mailed and posted as set forth herein, a return receipt is not required.

(c) Except as to an act or condition that constitutes an immediate threat to public health or safety, or where, pursuant to Section 10-14.100(c) an administrative fine may be imposed concurrently and immediately, every abatement notice issued under this section shall permit the owner or possessor of the site upon which the nuisance exists at least five (5) calendar days in which to voluntarily abate the nuisance.

(d) Every notice of abatement issued under this section shall state:

(1)  The act or condition which constitutes the nuisance or violation;

(2)  Any provision of this chapter, or any other provision of the Siskiyou County Code, 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 as such fine or penalty is set forth in this chapter or in any other part of the Siskiyou County Code;

(6) For a second or subsequent notice issued under this chapter that identifies the same, ongoing violations, the second or subsequent notice may additionally include:

i. The total number of days between the prior notice and the present notice of each continuing identified violation;

ii. The amount of fine, per day, being imposed for the identified violation;

iii. The total amount of fine imposed based on subsections (a) and (b) for the identified violation of this chapter or any other part of the Siskiyou County Code;

(7) an admonishment that the County may seek recovery of its costs of investigation, enforcement, and abatement pursuant to Chapter 5 of Title 1;

(8) an order prohibiting the continuation or repeated occurrence of the Code violation(s) described in the notice; and

(9)  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)~~ (f).

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)~~ (e)  Demand for Hearing.

(1) If the owner or possessor of the site demands a hearing within the time set forth in ~~the abatement notice~~ subsection (e)(2), 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~~f). 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)~~ (f) 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)~~ (g) if it determines that a sufficient factual basis exists to warrant abatement by the County.

(2) Any recipient of a notice to abate may contest the factual or legal grounds of the notice by completing a Request for Hearing form and returning it to the Director of the Department that issued the notice within ten (10) days from the date the notice was served.

(3) The failure of a Responsible party to file an appeal in accordance with the provisions of this section shall constitute a waiver of the Responsible Party's rights to administrative determination of the merits of the notice to abate and the amount of any associated penalty or fine. If no appeal is filed, or if the appeal is abandoned in writing, or by a failure to appear at a hearing without being excused, the notice to abate shall be deemed a final administrative order, a forfeiture of any penalty or fine, and a failure to exhaust the Responsible party's administrative remedies.

~~(d)~~ (f)  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:

(i)  Whether the acts or conditions specified in the notice of abatement exists;

(ii)  Whether those acts or conditions constitute a nuisance;

(iii)  If a nuisance is determined to exist, whether it should be abated by the county;

(iv)  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

(v)  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)~~ (g)  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 (5) 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)~~ (h) 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 100, of Chapter 14 of Title 10 is hereby amended to read as follows:

“Sec. 10-14.100. - 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 and/or each violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements as a result of, or to facilitate, the violation of this chapter, as imposed by the enforcing officer:

(a)  ~~Up to Five Hundred ($500.00) Dollars per day for the first violation; and up to One Thousand ($1,000.00) Dollars 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.~~ Up to five thousand dollars ($5,000.00) per day per violation for each day that the violation continues.

(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:~~

~~(1)  That, at the time he or she acquired the property, a violation of this Code already existed on the property;~~

~~(2)  The property owner did not have actual or constructive notice of the existence of that violation; and~~

~~(3)  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.~~

(c) Immediate imposition of penalty or fine. Pursuant to Government Code Section 53069.4(a)(2)(B), or as that section may be amended from time to time, the enforcing officer may immediately impose the civil penalty set forth under subsection (a). If the Responsible party abates the nuisance or violation within the voluntary time period provided on the notice to abate, the director of the enforcing Department may cancel the civil penalty.

(d) Exception to Immediate Imposition of penalty or fine. Pursuant to Government Code Section 53069.4(a)(2)(C) prior to the imposition of administrative fines or penalties, the enforcing officer shall provide for a reasonable period of time, no longer than (5) days from the time and date of notice, to correct the violation after considering the circumstances of the case, if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.

(e) Interest. Any administrative fine and penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 30th day after the penalty becomes a final decision or order.

(f) Right to Judicial Review. Pursuant to Government Code section 53069.4, within twenty (20) days after service of the final order or decision pursuant to the hearing held under subsection (d), a person contesting the final administrative order or decision may seek review by filing an appeal with the Superior Court.

(g) Enforcement and Collection of Fines. The County may collect any past due fine or late payment charge, and may also recover its collection costs, by use of all available legal means. The failure of any person to pay a fine assessed under this chapter, or a late payment charge or collection costs related to a notice to abate, by the due date shall constitute a debt to the County. The County may seek payment of the debt by use of all available legal means, including but not limited to the following:

 (1) The county may refer the debt for collection.

(2) The County may file a civil action in the Superior Court or the Small Claims Court to recover the debt including, but not limited to the remedies of money judgment or foreclosure.

(3) Whenever the debt has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely writ of mandate, the debt may constitute a lien against the real property on which the violation occurred pursuant to the following procedures:

(i.) The lien provided herein shall have no force and effect until recorded with the county recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure section 697.310 et seq., and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220, inclusive.

(ii.) Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.

(iii.) Prior to recording any such lien, the enforcing officer shall prepare and file with the clerk of the board of supervisors a report stating the amounts due and owing.

(iv.) The clerk of the board of supervisors will fix a time, date, and place for the board of supervisors to consider the report and any protests or objections to it.

(v.) The clerk of the board of supervisors shall serve the owner of the property with a hearing notice not less than ten days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail is effective on the date of mailing and failure of owner to actually receive notice does not affect its validity.

(vi.) Any person whose real property is subject to a lien pursuant to this section may file a written protest with the clerk of the board of supervisors and/or may protest orally at the board of supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

(vii.) At the conclusion of the hearing, the board of supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.

(viii.) Within thirty days following the board of supervisors' adoption of a resolution imposing a lien, the clerk of the board of supervisors will file same as a judgment lien in the Siskiyou County recorder's office.

(ix.) Once the county receives full payment for outstanding principal, penalties, and costs, the clerk of the board of supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Siskiyou County recorder’s office. This notice of satisfaction will cancel the county's lien under this section.

(x.) The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction. There shall be no right to trial by jury. The county shall be entitled to its attorney’s fees and costs and the issuance of a judgment to foreclose.

SECTION IV: 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 V: 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 \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 at a regular meeting of the Board of Supervisors by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MICHAEL N. KOBSEFF, Chairman

Board of Supervisors

ATTEST:

LAUREN BYNUM, CLERK,

Board of Supervisors

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy

g:\share\ordinanc\ordinance shell.docx