COMPASSIOTE USE ORDINANCE
OF THE
ROUND VALLEY INDIAN TRIBES
2006

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COMPASSIONATE USE ORDINANCE
of the
Round Valley Indian Tribes

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COMPassionate USE ORDINANCE
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Section 1 – PURPOSE

1.1 The purpose and intent of this Ordinance is to civilly regulate those persons and lands within Round Valley Indian Country, as it relates to the health, safety, and welfare of the Round Valley Indian Tribes.

1.2 The Ordinance seeks to do so in a manner that is consistent with California State law, and to balance the needs of medical patients and their caregivers for access to medical marijuana with the need to limit the harmful societal and environmental impacts that are sometimes associated with marijuana cultivation.

1.3 The Council finds that the Round Valley Indian Tribes’ Compassionate Use Ordinance, as amended on June 12, 2007 and then again on June 19, 2012, thereafter remained ambiguous, and seeks herein to clarify and apply that law to new factual and legal settings. This amendment to the Compassionate Use Ordinance shall not be deemed to constitute a substantive change in the law, but rather to clarify the previous Compassionate Use Ordinance as amended, and should therefore be applied retroactively to June 19, 2012.

1.3 Nothing in this Ordinance shall operate or be construed to allow the use or diversion of marijuana for nonmedical purposes or to allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. Nor shall anything in this Ordinance operate to be construed to allow the State to impose its civil regulatory or land use laws in Round Valley Indian Country.

Section 2 – DEFINITIONS

2.1 “Council” or “Tribal Council” shall mean the Round Valley Indian Tribal Council, the governing body of the Round Valley Indian Tribes.

2.2 “Cultivation” shall mean to grow marijuana and shall include the possession of any live marijuana plant(s) within exterior boundaries of the Reservation.

2.3 “Exempted Person” shall mean the individual, tribal member or not, in possession of a Tribal Use Identification Card.

2.4 “Indian Country” shall be defined by 18 U.S.C. § 1151 (Appendix), all such lands, including without limitation the Round Valley Indian Reservation and the entirety of lands, territories, waters, and airspace therein.

2.5 “Injunctive Relief” shall mean a court-ordered act or prohibition against an act that has been requested in a petition to the court for an injunction. Usually “injunctive
relief" is granted only after a hearing at which both sides have an opportunity to present testimony and legal arguments.

2.6 “Member” or “Tribal Member” shall mean an enrolled member of the Round Valley Indian Tribes.

2.7 “Non-Member” shall mean a person who is not an enrolled member of the Round Valley Indian Tribes.

2.8 “Ordinance” shall mean this Compassionate Use Ordinance.

2.9 “Person” shall mean all people, tribal members or non-members, within Round Valley Indian Country or under the jurisdiction of the Round Valley Indian Tribes.

2.10 “Primary Caregiver” shall mean the individual designated by the exempted person under this Ordinance who has consistently assumed responsibility for the health and safety of that person.

2.11 “Qualified Patient” means a “qualified patient” as defined at CAL. HEALTH & SAFETY CODE § 11362.71(f) (Appendix).

2.12 “Reservation” or “Reservation Lands” shall mean the Round Valley Indian Reservation and the entirety of lands therein, as defined by 18 U.S.C. § 1151 (Appendix).

2.13 “State” shall mean the State of California, inclusive of its Mendocino and Trinity Counties.

2.14 “State Pre-Identification Card” or “Identification Card” shall have the same definition as CAL. HEALTH & SAFETY CODE § 11362.7-83 (Appendix).

2.15 “Tribe” shall mean the Round Valley Indian Tribes, inclusive of its departments, agencies and entities.

2.16 “Tribal Court” means the judiciary branch of the Round Valley Indian Tribes, which is in final development as of the date of this amended Ordinance.

2.17 “Tribal Police” or “Tribal Police Department” means the Tribal Police Department of the Round Valley Indian Tribes, or the authorized representatives thereof.

2.18 “Tribal Notification” shall mean an official Notification from the Tribal Police Department.
Section 3 – FINDINGS

The Council finds that:

3.1 Whereas, an Ordinance was adopted by the Council and certified by the U.S. Department of Interior in 1970 that made lawful within the boundaries of the Reservation under the jurisdiction of the tribe the “Introduction, Sale, or Possession of Intoxicants,” provided, that such introduction, sale, or possession is in conformity with the laws of the State.

3.2 Whereas, the “Introduction, Sales, or Possession of Intoxicants” continues to be a federal offense under 18 U.S.C. § 1161 (Appendix).

3.3 Whereas, the State has enacted the Compassionate Use Act of 1996, CAL. HEALTH & SAFETY CODE §§ 11362.5 (Appendix).

3.4 Whereas, Mendocino County has enacted its Medical Marijuana Cultivation Regulation, MENDOCINO CTY. CODE §§ 9.31.010, et seq. (Appendix)

3.5 Whereas, the general membership of the Round Valley Indian Tribes retain rights under the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301, et seq. (Appendix)

3.6 Whereas, the general membership of the Round Valley Indian Tribes, through the results of votes cast, chose not to enact an Ordinance to “ban” all marijuana cultivation.

3.7 Whereas, Indian persons within Round Valley Indian Country are protected by the American Religious Freedom Act of 1978, 42 U.S.C. § 1996 (Appendix), including the right to maintain traditional gathering sites and to engage in gathering activities

3.8 Whereas, there resides within Round Valley Indian Country non-tribal members who cultivate and possess marijuana under the guidelines of the State of California and County of Mendocino.

3.9 Whereas, the Council seeks to ensure that seriously ill people have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana.

3.10 Whereas, the Council seeks to ensure these people and their primary caregivers that obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

3.11 Whereas, the Council seeks to facilitate the prompt identification of qualified patients and primary caregivers; avoid unnecessary arrest and prosecution of these individuals; provide needed guidance to law enforcement officers; promote uniform and
consistent application of Tribal and State laws; and to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

3.12 Whereas, whether grown for medicinal purposes or diverted to the black market, marijuana may be sold for thousands of dollars per pound, and thus must be regulated.

3.13 Whereas, there have been several marijuana-related incidents of burglary, robbery, and armed robbery, some included acts of violence resulting in injury or death.

3.14 Whereas, marijuana that is grown indoors may require excessive use of electricity that may overload standard electrical systems creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, improper maintenance of the generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may create an unreasonable risk of fire and pollution; and further, such activities pose a risk to the natural environment of Round Valley Indian Country.

3.15 Whereas, the right of qualified patients and their primary caregivers under Tribal and State laws to cultivate marijuana plants for medical purposes does not confer upon them the right to cause harm to the health, safety, or welfare of those persons within Round Valley Indian Country.

3.16 Whereas, by permitting no more than twenty-five (25) marijuana plants for any one (1) person in possession of a lawfully issued Tribal Use Identification Card, the Council anticipates a significant reduction in the complaints of crime and pollution described herein.

3.17 Whereas, the Council finds that the indoor or outdoor cultivation of more than twenty-five (25) marijuana plants per any one (1) person in possession of a lawfully issued Tribal Use Identification Card within Round Valley Indian Country for medicinal purposes will likely result in an unreasonable risk of harm to the health, safety, and welfare of these persons, increased crime, and fire and/or pollution, notwithstanding the limitations on cultivation that are imposed within this Ordinance.

3.18 Whereas, Mendocino County’s Medical Marijuana Cultivation Regulation, MENDOCINO CTY. CODE §§ 9.31.010, et seq. (Appendix), is a civil regulatory and land use ordinance, and because Pub. L. 280 (Appendix) does not grant the State or Mendocino County any general civil regulatory or land use power over Round Valley Indian Country, the Council finds it necessary for the Tribe to enact its own Compassionate Use Ordinance that will civilly regulate medical marijuana cultivation.

3.19 Whereas, Mendocino County’s land use restriction for indoor or outdoor cultivation of more than twenty-five (25) marijuana plants per legal parcel of land, MENDOCINO CTY. CODE §§ 9.31.050, is impractical in Round Valley Indian Country given the disparate legal status of Indian landholdings, including trust, allotted, fee, heirship and assignment land parcels; the range in Indian land parcel acreage, ranging from a partial acre to in excess of seventy acres; and the fact that multiple Tribal families might occupy a particular Indian land parcel, the Round Valley Indian Tribes must abide by Chapter 24 of 25
U.S. Code § 2218, amended 2000- Approval of leases, rights-of-way, and sales of natural resources, Consent Required for Leases, states the following requirements:

A. If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent.
B. If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.
C. If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.
D. If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land, 50% plus one (1).

3.20 Whereas, a May 7, 2010 letter from the Bureau of Indian Affairs (BIA) Pacific regional Office to the Tribal Council President, confirming that “California medical marijuana laws do not apply on Federal lands within the State,” such as Round Valley Indian Country, but declaring that “criminal laws of the State (and those related to drug distribution) are applicable” therein, has only served to confuse the state of medical marijuana law in Round Valley Indian Country.

3.21 Whereas, the Council concur with the United States Congress’ findings to the Tribal Law and Order Act of 2010:

[The complicated jurisdictional scheme that exists in Indian country ...has a significant negative impact on the ability to provide safety to Indian communities; ...has been increasingly exploited by criminals; and ...requires a high degree of commitment and cooperation among tribal, Federal and State law enforcement officials… Pub. L. No. 11-211, § 202, 124 Stat. 2262 (2010)]

3.21 Whereas, the Council concurs with the U.S. Department of Justice and the Bureau of Indian Affairs’ conclusion that “[b]road-based partnerships involving key federal, tribal, state and local partners can build stronger, more sustainable programs” and that such “collaboration can address challenges related to jurisdiction over tribal members.” DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF THE INTERIOR, TRIBAL LAW AND ORDER ACT: LONG TERM PLAN TO BUILD AND ENHANCE TRIBAL JUSTICE SYSTEMS 32 (2011).

3.22 Whereas, to ensure the health and safety of all people living within the exterior boundaries of the Reservation the Council concurs with a U.S. Department of Justice Memorandum dated October 28, 2014, subject line: Policy Statement Regarding Marijuana Issues in Indian Country, regarding the Cole Memorandum (provides guidance to United States Attorneys on the proper prioritization of marijuana enforcement), the eight priorities of enforcement are:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

3.22 Whereas, the Council finds that consultation, communication, coordination and collaboration between the Tribe, Tribal Council, and Tribal Police Department and the State, Mendocino County and County Sheriff’s Office, as well as the Bureau of Indian Affairs and any federal law enforcement agencies, are required to ensure the health, safety and welfare of all persons within the Round Valley Indian Country and respect for the inherent sovereignty of the Round Valley Indian Tribes, particularly in concern for the cultivation, possession, and use of marijuana for medicinal purposes.

3.23 Whereas, the Council agrees with State Governor Edmund G. Brown Jr.’s directive that “every state agency and department …shall encourage communication and consultation with California Indian Tribes …to discuss state policies that may affect tribal communities.” [Cal. Executive Order B-10-11 Sept. 19, 2011 (Appendix)]

3.24 Whereas, in the guiding case of State v. Cummings, 679 N.W.2d 484, 487 S.D. 2004 (Appendix), it was held that “the state [cannot] extend its jurisdiction into the boundaries of the Tribe’s Reservation without consent of the Tribe or a tribal-state compact.”

3.25 THEREFORE, to ensure the health, safety, and welfare of all persons within Round Valley Indian Country and the protection of the natural environment therein, the Round Valley Tribal Council is obligated to clearly define the Tribe’s civil regulations as they relate to the cultivation, possession and use of marijuana for medicinal purposes, through this Compassionate Use Ordinance.

Section 4 – REGULATIONS

4.1 The Round Valley Tribal Council declares that the purposes of the Compassionate Use Ordinance of 2006 are as follows:

4.1.1 To ensure that seriously ill tribal members have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spastically, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

4.1.2 To ensure patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
4.1.3 To ensure the health and safety of all people living within the exterior boundaries of the Reservation.

4.2 Nothing in this Section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes. No person shall *illegally* introduce, cultivate or possess marijuana within the interior boundaries of the Reservation.

4.3 It shall be legal for a patient in possession of a Tribal Use Identification Card or to a patient’s primary caregiver in possession of a Tribal Use Caregiver’s Identification Card to possess or cultivate marijuana for the personal medical purposes of the patient in possession of a Tribal Use Identification Card under Tribal guidelines.

4.4 Notwithstanding any other provision of the law, no physician on the Reservation shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

4.5 The introduction, cultivation, and possession of marijuana shall be lawful within the boundaries of the Round Valley Reservation under the jurisdiction of the Round Valley Tribal Council; provided that such introduction, cultivation, or possession is in conformity with the laws of the State of California.

4.6 Pursuant to the State’s Compassionate Use Act of 1996, **CAL. HEALTH & SAFETY CODE § 11362.5(d) (Appendix)**, neither **CAL. HEALTH & SAFETY CODE § 11357 (Appendix)**, relating to the possession of marijuana, nor **CAL. HEALTH & SAFETY CODE § 11358 (Appendix)**, relating to the cultivation of marijuana, shall apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician and in compliance with this Ordinance.

4.6.1 Although no person may be found in violation of this Ordinance for failing to do so, is recommended that physician recommendation and/or other supporting documentation be conspicuously posted at growing and cultivation sites, and that such documentation or a copy of the documentation be carried with the patient and caregiver at all times. Failure to post and carry such documentation may result in unnecessary legal fees and costs and/or criminal prosecution.

4.6.2 The Council recognizes that the **CAL. HEALTH & SAFETY CODE § 11362.5 (Appendix)**, an individual may qualify as a patient by an oral recommendation. However, a prompt and noninvasive determination of whether cultivation and/or possession is legal or illegal is best accomplished with a written recommendation. Therefore, the Council recommends that patients and caregivers obtain written recommendations. Failure to carry such
documentation may result in unnecessary legal fees and costs and/or criminal prosecution.

4.6.3 People have the right to choose their physician and communications with physicians are privileged. CAL. HEALTH & SAFETY CODE § 11362.5 (Appendix) provides that a physician can recommend marijuana use for “any illness for which marijuana provides relief.” The Council will honor any valid physician’s recommendation. For the purposes of this statute, any inquiry into physician-patient communications is prohibited.

4.7 It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within Round Valley Indian Country to cause or allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed within this Section 4.7.

4.7.1 The cultivation of more than twenty-five (25) marijuana plants per one (1) person tribal member in possession of a lawfully issued Tribal Use Identification Card, either indoors or outdoors, within Round Valley Indian Country, regardless of whether the person(s) growing the marijuana is/are a “qualified patient” or a “primary caregiver,” is hereby prohibited. Any qualified patient, person tribal member with a Tribal Use Identification Card, or primary caregiver may not cultivate marijuana in excess of the amount reasonably related to the current medical needs of the patients or persons with Tribal Use Identification Cards for whom the marijuana is being cultivated, either individually or collectively, but in no case more than twenty-five (25) total plants per one (1) person tribal member in possession of a lawfully issued Tribal Use Identification Card.

4.7.2 The use of light assistance for the outdoor cultivation of marijuana shall not exceed a maximum of six hundred (600) watts of lighting capacity per one hundred (100) square feet of growing area.

4.7.3 All lights used for the cultivation of marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.

4.7.4 The indoor or outdoor cultivation of marijuana shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.

4.7.5 All marijuana grown outdoors must be within a secure fence that fully encloses the immediate garden area.

4.7.6 All buildings where marijuana is cultivated or stored shall be properly secured to prevent unauthorized entry.
4.8 It is declared to be unlawful for any person within Round Valley Indian Country to possess marijuana plants or processed marijuana for medicinal purposes in excess of the limitations imposed within this Section 4.8.

4.8.1 No one (1) person in possession of a lawfully issued Tribal Use Identification Card may possess more than the equivalent of twenty-five (25) total plants of processed marijuana at any one time unless the Tribal Council and/or the Tribal Police Department is given notice of said possession and said possession is approved by the Tribal Council and/or the Tribal Police Department.

4.8.2 The Council recognizes that possession of certain amounts of cannabis product such as baked goods, tinctures, concentrated cannabis, infusions, salves and other cannabis derivatives may be consistent with medicinal use. Such possession will be treated on a case-by-case basis, with deference given to Section 8 of this Ordinance.

4.9 Nothing in this Section shall be construed as a limitation on the Tribe’s authority to abate any violation that may exist from the cultivation of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

4.10 Any Tribal laws, resolutions, or ordinances heretofore enacted which prohibits the introduction, cultivation, or possession of marijuana or that are inconsistent with this Ordinance are hereby repealed.

Section 5 – ENFORCEMENT OF ORDINANCE

5.1 This civil regulatory Ordinance shall be enforced by the Tribal Police Department upon any and all persons within Round Valley Indian Country. Any Tribal law enforcement officer may issue a citation for violation(s) of this Ordinance.

5.2 Nothing herein shall prohibit the Tribal Police from enforcement of any applicable criminal statutes, rules, regulations or ordinances, including those related to confiscation, seizure, and forfeiture.

5.3 Nothing herein shall prohibit the Council or individual residents of the Reservation from instituting a civil action before the Tribal Court, when established, against a person alleged to be acting in violation of this Ordinance. The prevailing party is entitled to recovery for court fees, costs, and reasonable attorney’s fees from the non-prevailing parties.

5.4 Should a plaintiff-party described in Section 5.3 institute a private suit against an individual alleged to be violating this Ordinance, the plaintiff shall provide written notice of the initiation of said action to the Tribal Council within five (5) days of the filing of such an action.
5.5 Upon a finding that a person has violated this Ordinance, the Tribal Council and/or the Tribal Court are authorized to issue appropriate orders to seize, forfeit, and destroy marijuana plants in violation of this Ordinance.

5.6 Any declaration in support of a request for injunctive relief under this Ordinance shall contain the following information:
   5.6.1 The number of marijuana plants under cultivation;
   5.6.2 The date of any citation(s) issued pursuant to this Ordinance;
   5.6.3 The name of the Officer or person that issued the citation, if any;
   5.6.4 The name of the owner of the property where the marijuana is located;
   5.6.5 The description of the physical location of the property where the marijuana is located;
   5.6.6 Whether any photographs or video tapes were taken of the marijuana plants; and
   5.6.7 Any other relevant information.

5.7 Any declaration in support of a request for an order of seizure, forfeiture, and/or destruction of marijuana plants shall contain the following information:
   5.7.1 The approximate number of marijuana plants to be seized, forfeited and destroyed or confiscated;
   5.7.2 The date of any citation(s) issued pursuant to this Ordinance;
   5.7.3 The name of the Officer or person that issued the citation, if any;
   5.7.4 The name of the owner of the property where the marijuana is located;
   5.7.5 The description of the physical location of the property where the marijuana is located;
   5.7.6 Whether any photographs or video tapes were taken of the marijuana plants;
   5.7.7 A statement as to whether any marijuana samples are necessary for prosecution of a criminal action; and
   5.7.8 Any other relevant information.
5.8 All declarations and other pleadings filed in support of any requested order shall be served upon the Defendant(s) in accordance with the applicable rules of the Tribal Council and/or Tribal Court.

5.9 Marijuana plants shall be disposed and/or destroyed in the following manner:

5.9.1 Action instituted for alleged violation(s) of this Ordinance shall be rendered moot, including the imposition of appropriate civil penalties and/or injunctive relief, by voluntary destruction and/or removal of marijuana plants by defendant(s).

5.9.2 Upon order of the Tribal Council and/or the Tribal Court, the Tribal Police Department shall dispose of marijuana as appropriate. Should any funds be received as a result of the disposal, said funds shall be distributed equally between the Tribal Police Department, the Tribal Council for the Indian Child Welfare Act Program, and Yuki Trails Program.

5.9.3 Governmental taking without due process and compensation is generally prohibited. Therefore, if any Tribal or State officer or officers believe marijuana cultivation and/or possession is pursuant to CAL. HEALTH & SAFETY CODE § 11362.5 (Appendix), but that the cultivation and/or possession exceeds this Ordinance, the officer or officers should only seize that amount in excess of the guidelines. Marijuana should not be destroyed or disposed of until an order from the Council and/or Tribal Court is issued.

Section 6 – Jurisdiction/Police Procedures

6.1 This Ordinance shall fall within the inherent jurisdiction of the Round Valley Indian Tribes, which includes civil regulatory jurisdiction over all persons, member or non-member, while in Round Valley Indian Country, and over all Indians while upon any Reservation or Indian Country lands. Nothing about this Ordinance shall operate or construed to cause the Tribe to accede to any State civil regulatory or land use jurisdiction in Round Valley Indian Country, particularly the application of State marijuana laws and regulations. The Council hereby disclaims any application or enforcement of State civil regulatory or land use laws in Round Valley Indian Country, particularly any State marijuana laws and regulations, unless adopted by reference herein.

6.2 When a tribal member is situated on Indian Country trust land, a State officer’s civil regulatory authority extends only so long as that officer does not circumvent or contravene governing tribal procedure. Because of the likelihood that State officers will seek to enforce State marijuana laws upon persons in Round Valley Indian Country, State police officers shall give reasonable advance tribal notification prior to entrance into Round Valley Indian Country if it is reasonably likely that said entrance will result in the enforcement of State marijuana laws.
6.3 In order to effect any search, arrest, or extradition warrant or investigation relative to State marijuana laws, against any tribal member in Round Valley Indian Country, State police officers shall not only provide that reasonable advance tribal notification required by Section 6.2, but shall also consult, communicate, and coordinate any such search, arrest, extradition, or investigation activities, with Tribal Police. Should the Tribal Police elect to cooperate in the execution any such search, arrest or extradition warrant or any investigation, State police officers shall not frustrate such cooperation by any dispatched Tribal Police officer.

6.4 For purpose of any search, arrest, or extradition warrant or investigation relative to State marijuana laws, against any tribal member in Round Valley Indian Country, Tribal Police shall be allowed access to, and allowed to share with State police officers, any land records from the Tribal Realty Department with regard to the location or ownership of any property in Round Valley Indian Country where marijuana is located, any membership records from the Tribal Enrollment Department for purpose of determining whether any person alleged to have violated State marijuana laws is a tribal member, or any other relevant information. It is the Tribe’s expectation that State police officers will reciprocate in sharing with Tribal Police any or all such documentation or information.

6.5 The Tribal codified procedures concerning any search, arrest or extradition warrant or investigation activities relative to any enforcement of State marijuana laws in Round Valley Indian Country, set forth in Sections 6.2, 6.3 and 6.4, are mandatory.

Section 7 – PENALTIES

7.1 Any person found to have violated this Ordinance shall be issued a civil penalty not to exceed a fine of $10,000 and/or the reasonable costs of investigation, seizure, forfeiture, destruction, litigation, and enforcement of this Ordinance.

7.2 Nothing herein shall prevent the Tribe or Tribal Council from seeking criminal prosecution of any person who violates this Ordinance for violation of any applicable criminal law(s) by appropriate other authorities.

Section 8 – MEDICINAL USE

Any defense based upon medicinal use, where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana, shall be considered as a valid defense to the alleged violations of this Ordinance.

Section 9 – SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.
Section 10 – Effective Date

This Ordinance shall take effect immediately upon passage, and shall have retroactive application to June 19, 2012.
APPENDIX

I. Federal Regulations Cited ................................................................. i
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I. FEDERAL REGULATIONS CITED

18 U.S.C. § 1151-
Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1161-
The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

25 U.S. Code § 2218-
Approval of leases, rights-of-way, and sales of natural resources.
(a) Approval by the Secretary
(1) In general
Notwithstanding any other provision of law, the Secretary may approve any lease or agreement that affects individually owned allotted land or any other land held in trust or restricted status by the Secretary on behalf of an Indian, if—
(A) the owners of not less than the applicable percentage (determined under subsection (b) of this section) of the undivided interest in the allotted land that is covered by the lease or agreement consent in writing to the lease or agreement; and
(B) the Secretary determines that approving the lease or agreement is in the best interest of the owners of the undivided interest in the allotted land.
(2) Rule of construction
Nothing in this section shall be construed to apply to leases involving coal or uranium.
(3) Definition
In this section, the term “allotted land” includes any land held in trust or restricted status by the Secretary on behalf of one or more Indians.
(b) Applicable percentage
(1) Percentage interest
The applicable percentage referred to in subsection (a)(1) of this section shall be determined as follows:

(A) If there are 5 or fewer owners of the undivided interest in the allotted land, the applicable percentage shall be 90 percent.
(B) If there are more than 5 such owners, but fewer than 11 such owners, the applicable percentage shall be 80 percent.
(C) If there are more than 10 such owners, but fewer than 20 such owners, the applicable percentage shall be 60 percent.
(D) If there are 20 or more such owners, the applicable percentage shall be a majority of the interests in the allotted land.

(2) Determination of owners
(A) In general
For purposes of this subsection, in determining the number of owners of, and their interests in, the undivided interest in the allotted land with respect to a lease or agreement, the Secretary shall make such determination based on the records of the Department of the Interior that identify the owners of such lands and their interests and the number of owners of such land on the date on which the lease or agreement involved is submitted to the Secretary under this section.
(B) Rule of construction
Nothing in subparagraph (A) shall be construed to authorize the Secretary to treat an Indian tribe as the owner of an interest in allotted land that did not escheat to the tribe pursuant to section 2206 of this title as a result of the Supreme Court’s decision in Babbitt v. Youpee (117 S [1] Ct. 727 (1997)).

(c) Authority of Secretary to sign lease or agreement on behalf of certain owners
The Secretary may give written consent to a lease or agreement under subsection (a) of this section—
(1) on behalf of the individual Indian owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or
(2) on behalf of any heir or devisee referred to in paragraph (1) if the heir or devisee has been determined but cannot be located [1]

(d) Effect of approval
(1) Application to all parties
(A) In general
Subject to paragraph (2), a lease or agreement approved by the Secretary under subsection (a) of this section shall be binding on the parties described in subparagraph (B), to the same extent as if all of the owners of the undivided interest in allotted land covered under the lease or agreement consented to the lease or agreement.
(B) Description of parties
The parties referred to in subparagraph (A) are—
(i) the owners of the undivided interest in the allotted land covered under the lease or agreement referred to in such subparagraph; and
(ii) all other parties to the lease or agreement.
(2) Tribe not treated as party to lease; no effect on tribal sovereignty, immunity
(A) In general
Subparagraph (B) shall apply with respect to any undivided interest in allotted land held by the Secretary in trust for a tribe if a lease or agreement under subsection (a) of this section is
otherwise applicable to such undivided interest by reason of this section even though the Indian tribe did not consent to the lease or agreement.

(B) Application of lease
The lease or agreement described in subparagraph (A) shall apply to the portion of the undivided interest in allotted land described in such paragraph (including entitlement of the Indian tribe to payment under the lease or agreement), and the Indian tribe shall not be treated as being a party to the lease or agreement. Nothing in this section (or in the lease or agreement) shall be construed to affect the sovereignty of the Indian tribe.

(e) Distribution of proceeds
(1) In general
The proceeds derived from a lease or agreement that is approved by the Secretary under subsection (a) of this section shall be distributed to all owners of undivided interest in the allotted land covered under the lease or agreement.

(2) Determination of amounts distributed
The amount of the proceeds under paragraph (1) that are distributed to each owner under that paragraph shall be determined in accordance with the portion of the undivided interest in the allotted land covered under the lease or agreement that is owned by that owner.

(f) Rule of construction
Nothing in this section shall be construed to amend or modify the provisions of Public Law 105–188 (25 U.S.C. 396 note), the American Indian Agricultural Resources Management Act (25 U.S.C. 3701 et seq.), title II of the Indian Land Consolidation Act Amendments of 2000, or any other Act that provides specific standards for the percentage of ownership interest that must approve a lease or agreement on a specified reservation.

(g) Other laws
Nothing in this chapter shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.

AMERICAN RELIGIOUS FREEDOM ACT OF 1978, 42 U.S.C. §1996 -
The policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Definitions: For purposes of this subchapter, the term

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.

2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense, and.
4. "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 19, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

PUBLIC LAW 280
A federal statute enacted by Congress in 1953. It enabled states to assume criminal, as well as civil, jurisdiction in matters involving Indians as litigants on reservation land.

PUBLIC LAW 111-211, § 202, 124 STAT. 2262 (2010)
The Tribal Law & Order Code.

II. STATE REGULATIONS CITED

CALIFORNIA EXECUTIVE ORDER B-10-11 (Sept 19, 2011)
WHEREAS California is home to many Native American Tribes with whom the State of California has an important relationship, as set forth and affirmed in state and federal law; and

WHEREAS the State of California recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority over their members and territory; and

WHEREAS the State and the Tribes are better able to adopt and implement mutually-beneficial policies when they cooperate and engage in meaningful consultation; and

WHEREAS the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus; and

WHEREAS tribal people, as both citizens of California and their respective sovereign nations, have a shared interest in creating increased opportunities for all California citizens.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, by virtue of the power vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that the position of Governor’s Tribal Advisor shall exist within the Office of the Governor;

IT IS FURTHER ORDERED that the Governor’s Tribal Advisor shall oversee and implement effective government-to-government consultation between my Administration and Tribes on policies that affect California tribal communities, and shall:

• Serve as a direct link between the Tribes and the Governor of the State of California.
• Facilitate communication and consultations between the Tribes, the Office of the Governor, state agencies, and agency tribal liaisons.
• Review state legislation and regulations affecting Tribes and make recommendations on these proposals.

IT IS FURTHER ORDERED that the Office of the Governor shall meet regularly with the elected officials of California Indian Tribes to discuss state policies that may affect tribal communities.

IT IS FURTHER ORDERED that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

For purposes of this Order, the terms “Tribe,” “California Indian Tribe”, and “tribal” include all Federally Recognized Tribes and other California Native Americans.

This Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that it be given widespread publicity and notice.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of September 2011.

EDMUND G. BROWN JR. Governor of California
ATTEST:  DEBRA BOWEN, Secretary of State

CALIFORNIA HEALTH & SAFETY CODE § 11362.5 -
(a) This section shall be known and may be cited as the Compassionate Use Act of 1996. 
(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows: 
   (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. 
   (B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.  
   (C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.
(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

CALIFORNIA HEALTH & SAFETY CODE § 11362.7(f) –
"Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

CALIFORNIA HEALTH & SAFETY § 11362.7-83 –
11362.7.
For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).
(2) Anorexia.
(3) Arthritis.
(4) Cachexia.
(5) Cancer.
(6) Chronic pain.
(7) Glaucoma.
(8) Migraine.
(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
(10) Seizures, including, but not limited to, seizures associated with epilepsy.
(11) Severe nausea.
(12) Any other chronic or persistent medical symptom that either:
(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(1) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71.

(a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.
(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:
   (1) Provide applications upon request to individuals seeking to join the identification card program.
   (2) Receive and process completed applications in accordance with Section 11362.72.
   (3) Maintain records of identification card programs.
   (4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
   (5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:
   (1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.
   (2) Application forms that shall be issued to requesting applicants.
   (3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715.

(a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:
   (1) The name of the person, and proof of his or her residency within the county.
   (2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.
   (3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
   (4) The name and the duties of the primary caregiver.
(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decision-maker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72.

(a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.
(3) The name and telephone number of the county health department or the county's designee that has approved the application.

c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735.
(a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:
(1) A unique user identification number of the cardholder.
(2) The date of expiration of the identification card.
(3) The name and telephone number of the county health department or the county's designee that has approved the application.
(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.
(5) Photo identification of the cardholder.
(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74.
(a) The county health department or the county's designee may deny an application only for any of the following reasons:
(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.
(2) The county health department or the county's designee determines that the information provided was false.
(3) The applicant does not meet the criteria set forth in this article.
(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.
(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745.
(a) An identification card shall be valid for a period of one year.
(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.
(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755.
(a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.
(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76.
(a) A person who possesses an identification card shall:
(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.
(2) Annually submit to the county health department or the county's designee the following:
(A) Updated written documentation of the person's serious medical condition.
(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.
(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.
(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.
(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765.
(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.
(b) Subdivision (a) shall apply to all of the following:
(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.
(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.768.
(a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.
(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.
(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.
(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.
(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.
(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

11362.77.
(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.
(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.
(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79.
Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:
(a) In any place where smoking is prohibited by law.
(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
(c) On a school bus.
(d) While in a motor vehicle that is being operated.
(e) While operating a boat.

11362.795.
(a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.
(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.
(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.
(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.
(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.
(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.
(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.
(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8.
No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed
by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:
   (1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.
   (2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.
   (b) Subdivision (a) applies to any of the following:
      (1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.
      (2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.
      (3) A person who counterfeits, tampers with, or fraudulently produces an identification card.
      (4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.
   (c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.
   (d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:
   (a) Adopting local ordinances that regulate the location, operation, or establishment of medical marijuana cooperative or collective.
   (b) The civil and criminal enforcement of local ordinances described in subdivision (a).
   (c) Enacting other laws consistent with this article.
MENDOCINO COUNTY CODE § 9.31.010
MEDICAL MARIJUANA CULTIVATION REGULATION
Sec. 9.31.010 - Purpose and Intent. It is the purpose and intent of this Chapter to regulate medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Mendocino by balancing:
(1) The needs of medical patients and their caregivers for enhanced access to medical marijuana;
(2) The needs of neighbors and communities to be protected from public safety and nuisance impacts; and
(3) The need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation.
Nothing in this Chapter shall be construed to:
(1) Allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein;
(2) Allow the use or diversion of marijuana for nonmedical purposes; or
(3) Allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California State law. (Ord. No. 4291, 2-14-2012)

MENDOCINO COUNTY CODE § 9.31.050
MEDICAL MARIJUANA CULTIVATION REGULATION
Sec. 9.31.050 - Limitation on Location to Cultivate Marijuana.
(A) The cultivation of marijuana, whether grown collectively or individually, in any amount or quantity, shall not be allowed in the following areas:
(1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any "church" or residential treatment facility as defined herein.
(2) Outdoors within one hundred (100) feet of any occupied legal residential structure located on a separate parcel.
(3) Outdoors in a mobile home park as defined in Health and Safety Code Section 18214.1 ["Park" means any manufactured housing community or mobile home park] within one hundred (100) feet of an occupied mobile home that is under separate ownership.
(4) In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.
(5) Outdoors within fifty (50) feet of a parcel under separate ownership.
(B) The distance between the above-listed uses in Subsection (A)(1) and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in Section 9.31.060, or if the marijuana is cultivated indoors, from the nearest exterior wall of the building in which the marijuana is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in Subsections (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in Section 9.31.060 to the nearest exterior wall of the residential structure.
MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM:    James M. Cole
         Deputy Attorney General

SUBJECT:  Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
• Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
• Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
• Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
• Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department’s enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department’s interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.
must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department’s previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system, may allay the threat that an operation’s size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation’s large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases — and in all jurisdictions — should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.
As with the Department’s previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department’s authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
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