ORDINANCE NO. 842

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YREKA ENACTING CHAPTER 9.26 ENTITLED "MEDICAL MARIJUANA CULTIVATION, DISTRIBUTION AND DELIVERY PROHIBITED" PROHIBITING THE CULTIVATION, DISTRIBUTION AND DELIVERY OF MEDICAL MARIJUANA WITHIN ALL ZONES IN THE CITY OF YREKA, AND FINDING THE ADOPTION OF THIS ORDINANCE TO BE EXEMPT FROM CEQA

THE CITY COUNCIL OF THE CITY OF YREKA FINDS AND ORDAINS AS FOLLOWS:

Section 1. Enactment.

Chapter 9.26 of Title 9 of the City of Yreka Municipal Code is hereby enacted and added as a codified ordinance to read as follows:

CHAPTER 9.26

MEDICAL MARIJUANA CULTIVATION, DISTRIBUTION AND DELIVERY PROHIBITED

Sections

9.26.100 Authority
9.26.110 Purpose and Intent
9.26.110 Findings
9.26.130 Scope
9.26.140 Responsibilities
9.26.150 Private Right of Action
9.26.200 Definitions
9.26.300 Cultivation, Processing, Dispensaries and Delivery Prohibited
9.26.400 Public Nuisance
9.26.500 Enforcement Authority
9.26.510 Hearing Authority
9.26.515 Right of Entry/Inspection
9.26.520 Violations
9.26.530 Remedies
9.26.540 Notice and Order to Abate
9.26.550 Correction, Payment or Hearing
9.26.560 Administrative Hearing Procedure

9.26.570 Failure to Appear at Planning Commission Hearing or Pay Administrative Penalties
9.26.580 Violation Penalties
9.26.590 Enforcement Costs

ARTICLE I
GENERAL PROVISIONS

9.26.100 Authority

Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 372 of the California Penal Code, California Code of Civil Procedure § 731 and California Civil Code §3491 the City Council of the City of Yreka does hereby enact this Chapter.

9.26.110 Purpose & Intent

The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to Medical Marijuana and to reduce conditions that create public nuisances through enacting these regulations including without limitation, the prohibition of Marijuana Cultivation in order to effectively control the adverse impacts associated with Marijuana Cultivation as stated herein, while considering the desires of Qualified Patients Qualified Patients and Primary Caregivers, in furtherance of the public necessity, health, safety, convenience, and general welfare within the City's jurisdictional limits. While in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" referred to herein as the "CUA"). In 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for Medical purposes without being subject to criminal prosecution under the California Penal Code. Yreka presently permits Marijuana dispensaries certain locations. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process Medical Marijuana within its jurisdiction. Nothing in this Chapter shall be construed to authorize any use, possession, Cultivation, or distribution of Marijuana for non-medical purposes or that is in violation of state or federal law.

9.26.120 Findings

A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies Marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted

medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.

B. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, Marijuana. The Federal Controlled Substances Act contains no exemption for the Cultivation, manufacture, distribution, dispensation, or possession of Marijuana for medical purposes.

C. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act," (codified as Health and Safety Code Section 11362.7 through 11362.83) clarify the scope of The Compassionate Use Act of 1996 by creating the Medical Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering Marijuana, as well as limiting the amount Marijuana a qualified individual may possess. The Medical Marijuana Program Act (codified as Health and Safety Code Section 11362.775) defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Cal. 4th 274.

D. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729 the California Supreme Court unanimously ruled that the CUA and the MMP did not preempt a local agency's own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of Medical Marijuana will not be permitted to operate within its borders. The court held that the CUA and the MMP: "...remove state-level criminal and civil sanctions from specified medical marijuana activities, but they do not establish a comprehensive state system of legalized medical marijuana; or grant a 'right' of convenient access to marijuana for medicinal use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries." This ruling has been applied to a City's right to prohibit the cultivation of Marijuana by numerous appellate court decisions.

E. Under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

F. In 2015 the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, created a comprehensive state regulatory and licensing system governing the cultivation, testing, and distribution of Medical Marijuana, as well as physician recommendations for Medical Marijuana. It created the Bureau of Medical Marijuana Regulation within the Department of

Consumer Affairs. It has primary responsibility for administering and enforcing the MMRSA. That scheme also provided for the protection of a local government agency's police powers in Business and Professions Code §§ 19315(a), 19316(a) and 19316(c). Thus all local remedies for any violation of this ordinance have been retained including the following enforcement actions: 1) Administrative citations; 2) Administrative abatement proceedings; 3) License revocation; 4) Civil action for injunctive relief and 5) Criminal enforcement following the failure to abate a public nuisance.

G. The City's geographic and climatic conditions provide conditions that are favorable to Outdoor Marijuana Cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of Marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.

H. The strong distinctive odor of Marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.

I. The strong and distinctive odor of Marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that many Cities have ordinances currently in place to minimize the smells associated with raising livestock.

J. Children (minors under the age of 18) are particularly vulnerable to the effects of Marijuana use and the presence of Marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).

K. The Cultivation of Marijuana in the incorporated area of the City of Yreka can adversely affect the health, safety, and well being of the City, its residents and environment. Comprehensive civil regulation of premises used for Marijuana Cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated Marijuana Cultivation, and that are especially significant if the amount of Marijuana cultivated on a single premises is not regulated and substantial amounts of Marijuana are thereby allowed to be concentrated in one place.

L. The indoor Cultivation of substantial amounts of Marijuana within a residence presents potential health and safety risks to those living in the residence, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

M. Comprehensive restriction of premises used for Marijuana Cultivation is proper and necessary to address the risks and adverse impacts as stated

herein, that are especially significant if the amount of Marijuana cultivated on a single premises is not regulated and substantial amounts of Marijuana are thereby allowed to be concentrated in one place.

N. Outdoor Marijuana Cultivation is creating devastating impacts to California's surface and groundwater resources and environmental damage. The State Water Resources Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of Marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.

O. The immunities from certain prosecution provided to Qualified Patients and their Primary Caregivers under State law to cultivate Marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the City will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated Cultivation of Marijuana in the City of Yreka.

P. Nothing in this Chapter shall be construed to allow the use of Marijuana for non-medical purposes, or allow any activity relating to the Cultivation, distribution, or consumption of Marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the City of Yreka, the Yreka City Attorney, the Siskiyou District Attorney, the Attorney General of State of California, or the United States of America.

Q. The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the Cultivation or other concentration of Marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

R. Based on the findings above, the potential establishment of the cultivation, and processing of Medical Marijuana in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above;

S. The issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for Marijuana Cultivation and processing will result in the aforementioned threat to public health, safety, and welfare; and

T. It is in the interest of the City, its residents, and its lawfully permitted businesses that City adopts this Ordinance to expressly prohibit the establishment and operation of Marijuana Cultivation, processing, delivery, and dispensary activities as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the City is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity

U. The California Constitution, Article XI, section 7, provides cities with broad authority to determine, for purposes of health, safety, and welfare, the appropriate uses of land within a City's boundaries.

V. The Planning Commission of the City of Yreka, after due notice, at the public hearing of January 20, 2016, reviewed similar proposed ordinances and accompanying documents, considered testimony regarding similar proposed Ordinances both a complete prohibition and a regulation of outdoor cultivation, and voted Ayes 3 and Nays 2 to adopt the Ordinance referred to in Resolution number 2016-3a and recommend approval to the City Council.

W. The Planning Commission of the City of Yreka, also reviewed similar proposed ordinances and found that the imposition of restrictions, such as those imposed here, are consistent and compatible with the objectives, policies, general land uses, and programs specified in the General Plan.

X. All legal prerequisites for the adoption of this Ordinance have occurred.

Y. The above recitals are all true and correct and are incorporated in the substantive portion of this Ordinance.

9.26.130 Scope

The provisions of this Chapter shall apply generally to all property throughout the incorporated area of the City of Yreka, as from time to time, annexed and expanded.

9.26.140 Responsibilities

A. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the incorporated area of City of Yreka to prevent a public nuisance from arising on, or from existing upon, his or her real property.

B. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the incorporated limits of the City of Yreka. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the incorporated area of the

City of Yreka to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

9.26.150 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, for compensatory damages, for injunctive relief, and for the cost of suit and reasonable attorney's and expert witness' fees, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2
DEFINITIONS

9.26.200 Definitions

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

A. "Building Official" means any person employed by the City of Yreka that has been delegated or assigned building inspection duties or building plan approval.

B. "City Manager" means the City Manager of the City of Yreka, California or his or her designee.

C. "Code" means the City of Yreka Municipal Code.

D. "Code Enforcement Officer" means any person employed by the City of Yreka that has been delegated or assigned code enforcement responsibilities.

E. "Commercial cannabis activity" shall have the meaning set forth in Business and Professions Code section 19300.5(k).

F. "Costs of Enforcement" or "Enforcement Costs" means the total cost incurred by the City in connection with a public nuisance including, but not limited to:

1. Any cost incurred in removing or remedying a public nuisance;

2. The actual expenses and costs of the City in preparation of notice and order, reconsideration, appeal and termination fees for administrative services rendered by the City in connection with the inspection, notification, prosecution and abatement procedures authorized by this code:

a. Notice and order, appeal and termination fees in such amounts as are determined from time to time by resolution of the city council;

b. Notice and order, appeal and termination fees based on services rendered by the City from the time of the initial complaint intake for the purpose of

documenting a violation of this code until the violation is corrected;

c. The notice and order, appeal and termination fees are not intended to be a penalty imposed for violation of this code or other laws;

d. Specifications and contracts;

e. Any attorney's fees expended by the prevailing party related to the abatement of the nuisance, through inspection warrant, civil action or otherwise whenever the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees;

f. The cost of printings and mailings required under this code;

g. All costs or expenses to which the City may be entitled pursuant to Health and Safety Code Section 510 and other statutory entitlement;

h. All costs and expenses for which the City may be liable under state law arising from or related to the nuisance.

3. Any cost incurred by the City in collecting the costs enumerated in subsections 1 and 2 of this definition.

G. "City" means the City of Yreka.

H. "Chapter" or Ordinance means this ordinance.

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

J. "Enforcement Official" means the Code Enforcement Officer, City Attorney or the City Police, or the authorized officers or designees of either, each of whom is independently authorized to enforce this Chapter.

K. "Marijuana" or "Marijuana Plant" means all parts of the plant Cannabis sativa L. or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It 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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

333 L. "Marijuana Cultivation Facility" means any business, facility, use,
334 establishment, property, or location where the cultivation of marijuana
335 occurs.

336 M. "Medical Marijuana" is Marijuana used for medical purposes where that
337 medical use is deemed appropriate and has been recommended by a
338 physician who has determined that the person's health would benefit from
339 the use of marijuana in the treatment of acquired immune deficiency
340 syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma,
341 migraine, spasticity, or any other serious medical condition for which
342 marijuana is deemed to provide relief as defined in subsection (h) of Health
343 and Safety Code § 11362.7.

344 N. "Medical Marijuana Dispensary" means any business, facility, use,
345 establishment, property, or location, whether fixed or mobile, where
346 Medical Marijuana is sold, made available to, delivered to and/or
347 distributed by or to three or more people. A "Medical Marijuana
348 Dispensary" does not include the following uses, as long as the location of
349 such uses are otherwise regulated by this Code or applicable law: a clinic
350 licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code,
351 a health care facility licensed pursuant to Chapter 2 of Division 2 of the
352 Health and Safety Code, a residential care facility for persons with chronic
353 life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of
354 the Health and Safety Code, a residential care facility for the elderly
355 licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety
356 Code, a residential hospice, or a home health agency licensed pursuant to
357 Chapter 8 of Division 2 of the Health and Safety Code, as long as any such
358 use complies strictly with applicable law including, but not limited to,
359 Health and Safety Code §11362.5 and following.

360 O. "Marijuana Processing" means any method used to prepare marijuana or its
361 byproducts for commercial retail and/or wholesale, including but not
362 limited to: drying, cleaning, curing, packaging, and extraction of active
363 ingredients to create marijuana related products and concentrates.

364 P. "Parcel" means any parcel of real property that may be separately sold in
365 compliance with the Subdivision Map Act (commencing with Section
366 66410 of the Government Code) and also means parcels that are described,
367 recorded and kept in official City records specifically including documents
368 and maps used by the Siskiyou County Assessor's Office, the Siskiyou
369 County Tax Collector's Office and the Siskiyou County Recorder's Office.

370 Q. "Primary Caregiver" shall have the same meaning as "primary caregiver"
371 as defined in the California Health and Safety Code, commencing with
372 Section 11362.7(d), and as further defined in the California Supreme Court
373 decision People v. Mentch (2008) 45 Ca1.4th 274.

374 R. "Police" or "Police Department" means the City of Yreka Police
375 Department or the authorized representatives thereof.

S. "Qualified Patient" shall have the same meaning as "qualified patient" as defined in the California Health and Safety Code, commencing with Section 11362.7(f) as amended or supplanted.

ARTICLE 3
RESTRICTIONS AND REQUIREMENTS

9.26.300 Cultivation, Processing, Dispensaries and Delivery Prohibited.

A. Marijuana Cultivation Facilities, Marijuana Cultivation, Marijuana Processing, marijuana delivery, or the establishment or operation of a Medical Marijuana Dispensary in the City, are prohibited in all zones in the City and shall not be established or operated anywhere in the City except where this ordinance is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of Marijuana Cultivation Facilities, Marijuana Cultivation, Marijuana Processing, marijuana delivery, or the establishment or operation of a Medical Marijuana Dispensary in the City.

B. It is unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any Parcel within any zoning district in the City to cause or allow such Parcel or premises to be used for the Cultivation of Medical Marijuana Plants except where the City is preempted by federal or state law from enacting a prohibition on any such activity.
No person may own, establish, open, operate, conduct, or manage a Medical Marijuana Dispensary, Marijuana Cultivation Facility or Commercial Cannabis Activity in the City, or be the lessor of property where a Marijuana Cultivation Facility and/or Commercial Cannabis Activity in all zones in the City. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any Medical Marijuana Dispensary, Marijuana Cultivation Facility and/or Commercial Cannabis Activity in all zones in the City. Nothing in this prohibition shall apply to the exceptions to the prohibition of "Medical Marijuana Distribution Facility" under Yreka Municipal Code Chapter 9.25, §9.25.010(1) through (5) inclusive.

C. No person and/or entity may deliver or transport Medical Marijuana from any fixed or mobile location, either inside or outside the City, to any person in the City except where this ordinance is preempted by federal or state law from enacting a prohibition on any such activity.

ARTICLE 4
PUBLIC NUISANCE

9.26.400 Public Nuisance

Any violation of this Chapter is hereby declared to be a public nuisance.

ARTICLE 5
ENFORCEMENT

9.26.500 Enforcement Authority

The Code Enforcement Official that has been assigned responsibility for administration of Code Enforcement services is hereby designated to enforce this Chapter.

9.26.510 Hearing Authority

The City Planning Commission's jurisdiction is expanded to include conducting hearings on any and all alleged public nuisances under this Chapter, its abatement and the imposition of administrative penalties in addition to the City Planning Commission's existing powers already set forth in other parts of the Code and in applicable statutes.

9.26.515 Right of Entry/Inspection

To enforce the provision of this Code, any Code Enforcement Officer may at a reasonable time request inspection of any Parcel suspected of Cultivating Marijuana. If the person owning or occupying the Parcel refuses the request for an inspection, the Code Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

9.26.520 Violations

A. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.

B. It shall be unlawful and a violation of this Chapter to do anything in contrary to the requirements and provisions set forth in this Chapter.

C. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation, which persists for more than one day, is deemed a continuing violation.

9.26.530 Remedies

A. Any violation of this Chapter shall be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.

B. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City of Yreka or any other governmental entity to enforce City ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

C. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.

D. A civil action to foreclose a lien, the special assessment procedure, and a personal action against the owner and all other responsible persons shall not be mutually exclusive and the City shall be free to use all methods simultaneously as long as the City does not receive multiple payments for Enforcement Costs.

9.26.540 Notice and Order to Abate

A. Upon making a determination that a public nuisance exists, the Code Enforcement Officer shall notify the owner and/or the alleged violator that a public nuisance exists upon such owner's property and of the administrative penalties to be imposed. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Code Enforcement Officer shall complete a proof of service.

B. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance; and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means of correction within a reasonable time certain as determined necessary for such abatement by the Code Enforcement Officer based upon the nature and complexity of the abatement process, normally being ten (10) days, or more, from the date such notice is mailed and/or posted. The correction period may be shortened in the event the Code Enforcement Officer determines that an immediate threat to the public health and safety may in existence. A correction period longer than ten (10) days may be granted if deemed necessary by the Code Enforcement Officer. No administrative penalties shall be assessed in the event the nuisance is voluntarily abated within the specified correction period.

9.26.550 Correction, Payment or Hearing

A. Offenders' Obligation. After the issuance of the Notice and Order to Abate, at a minimum, an offender or the offender's representative shall do one (1) of the following to avoid the penalty set forth in Section 9.26.580:

1. Pay the administrative penalties amount designated on the Notice and Order to Abate within twenty-one (21) days of the Notice and Order to Abate issuance date.

   Or

2. Within and including ten (10) days of the issuance of the Notice and Order to Abate make a written request for a hearing with the Planning Commission and appear before the Planning Commission on the designated hearing date and abide by or appeal the Planning Commission's decision. The offenders' written request shall be considered timely if it arrives, is delivered, or it reflects a United States mail postmark date within and including ten (10) days from the issuance date of the Notice and Order to Abate.

   Or

3. Timely abate the nuisance by its correction and obtain the Code Enforcement Officer's verification that the nuisance as been abated.

B. Payments. Payments shall be sent to the City's Finance Department.

C. Obligation to Correct Violation. Nothing in this Code shall be interpreted to mean that because an offender has paid the administrative penalties that he or she is not required to correct the violation. Failure to correct the violation could result in the issuance of additional citations.

9.26.560 Administrative Hearing Procedure

A. Hearing

The Planning Commission shall, at the scheduled date and time specified, conduct a hearing where the Commission can hear and consider any relevant testimony or evidence offered by the offender, any city official or any other interested party. The hearing shall be informally conducted. The formal rules of the California Evidence Code shall not apply, except that irrelevant and unduly repetitious evidence shall be excluded at the Planning Commission's discretion.

B. Jury and Public Defense

Pursuant to California Penal Code Section 19.6, an offender shall not be entitled to a jury in a Planning Commission (infraction) hearing nor shall an Offender be entitled to have the public defender or other counsel appointed at public expense to represent him or her.

C. Continuances

At its discretion, the Planning Commission may continue the hearing to another date and time.

D. Written Determination Contents

If the offender or the offender's representative appears at the hearing, the Planning Commission shall provide a written determination to the offender and the City.

The Planning Commission's written decision shall contain the following:

1. The Planning Commission's findings of fact and conclusions.
2. The procedure described in Sections 9.26.570(E)(2) and 9.26.570(E)(3) for appealing the Planning Commission's decision.

E. Notification of Written Determination

If the Planning Commission produces a written decision, it should do so within thirty (30) days of the hearing's conclusion. Written Determinations shall be provided by one (1) of the following methods:

1. By personal service on the offender.
2. By registered or certified mail to the offender's last known address.

Written Determinations shall be considered timely if they arrive, are delivered, or reflect a United States mail postmark date within and including thirty (30) days from the conclusion of the Planning Commission hearing where the determination was made.

9.26.570 Failure to Appear at Planning Commission Hearing or Pay Administrative Penalties

A. Penalty

If the offender fails to pay the administrative penalties imposed within the time period specified in Section 9.26.570(G)(1) and fails to appear on the designated hearing date, the offender will be subject to the penalty set forth in Section 9.26.580. When an offender requests a hearing and fails to appear at the designated hearing date, the penalty in Section 9.26.580 shall immediately be in effect if the offender has not paid the administrative penalties imposed by the Designated Hearing Date and twenty-one (21) days has passed since the citation issuance date.

If the offender fails to appear at the designated hearing date and twenty-one (21) days from the citation issuance date has not passed, the offender has until the end of the twenty-one (21) day period to pay the administrative penalties imposed.

B. Waiver of Right to Hearing

The offender's failure to appear on the designated hearing date shall constitute a waiver of the right to a hearing. An offender's failure to appear on the designated hearing date shall be presumed an admission of guilt to the municipal ordinance violation charges as indicated on the Notice and Order to Abate.

C. Good Cause

Upon a showing of good cause by the offender, the Planning Commission may excuse the offender's failure to appear on the designated hearing date and reschedule the offender's hearing on the condition that the offender pays a deposit in the amount of the administrative penalties.

D. Nothing in this Section shall be interpreted to mean the following:

1. The offender is excused from the requirement to pay the administrative penalties or appear at a Planning Commission hearing.
2. The Planning Commission may excuse the offender from appearing altogether.
3. The Planning Commission may excuse the offender from paying the administrative penalties, unless a hearing as described in Section 26.9.570(A) has been conducted and the Planning Commission finds in favor of the offender.
4. Notwithstanding the foregoing, the Planning Commission may suspend payment of the administrative penalty and/or Enforcement Costs on the condition that the nuisance is abated within a time set by the Planning Commission.

E. Written Decision

If the offender fails to appear at the hearing, the Planning Commission may, but is not required to render a decision. However, any decision that the Planning Commission does render shall be in favor of the City, as the offender's failure to appear constitutes an admission of guilt as specified above. The offender's failure to appear shall not affect the validity of the Planning Commission's decision.

F. Planning Commission Decision in Offender's Favor

A decision in favor of the offender shall constitute a dismissal of the municipal ordinance violation. The City shall return any monies paid by the offender as a deposit towards the dismissed municipal ordinance violation administrative penalties.

G. Planning Commission Decision in City's Favor

If the Planning Commission conducts a hearing and renders a written decision in favor of the City, the Offender must do one (1) of the following:

1. Abide by the Planning Commission's order including paying the administrative penalties and Enforcement Costs to date in full within twenty (20) calendar days of service of the Planning Commission's decision.

   OR

2. Appeal the Planning Commission's decision pursuant to California Government Code Section 53069.4 (hereinafter Section 53069.4) within twenty (20) calendar

days after service of the Planning Commission's decision. Pursuant to Section 53069.4, the appealing party shall serve a copy of the appeal notice in person or by first-class mail upon the City. Appeal notices shall be sent to: City Manager, 701 Fourth Street, Yreka, California 96097. If no appeal notice is filed within the twenty (20) calendar day period, the Planning Commission's decision shall be deemed confirmed.

OR

3. File a petition for a writ of mandate pursuant to California Code of Civil Procedure Section 1094.5 et seq.

9.26.580 Violation Penalties

A. Criminal Penalties.

Any responsible party, whether owner, lessee, sublessor, sublessee or occupant of any premises who violates the provisions of this code shall be guilty of a misdemeanor for each day such violation continues. Nothing in this provision is intended to obviate any applicable immunity conferred pursuant to Health and Safety Code §11362.71(e).

B. Administrative Penalties.

1. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. The city attorney may pursue any lawful civil remedy and administrative penalties brought to enforce any provisions of this Chapter.

2. In addition to the actual abatement and/or Enforcement Costs incurred by the City any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty payable to the City as follows:

   a. A penalty of $200 for each violation of this Code per day as set forth in the Notice and Order to Abate.

   b. A penalty of $500 for each violation of this Code per day when a second violation of this Code occurs within twelve (12) months of a previously issued Notice and Order to Abate.

   c. A penalty of $1, 000 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within twelve (12) months of the original Notice and Order to Abate.

3. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each cubic foot of area under Cultivation in violation of this Chapter shall be charged as a separate violation.

4. The Administrative Penalty, pursuant to this Section, shall be assessed immediately upon the issuance of a Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Code Enforcement Officer.

C. Obstruction a Crime.

Any person who obstructs, impedes or interferes with any representative, officer, employee, contractor or authorized representative of the city council or with any representative of a City department or with any person who owns or holds any estate or interest in a building or Parcel which has been ordered to be abated pursuant to the provisions of this Chapter when any of the aforementioned individuals are engaged in the work of abating any nuisance as required by the provisions of this Chapter, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this Chapter lawfully engaged in proceedings involving the abatement of a nuisance is guilty of a misdemeanor.

9.26.590 Enforcement Costs

A. All costs and penalties associated with the enforcement of this Chapter are the joint and several responsibility of the owner, lessee, renter, occupier and person having charge or possession of any Parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.

B. The City Manager/designee shall keep an account of the Enforcement Costs (including incidental expenses) of abating such nuisance on each Parcel where the work is done and shall render an itemized billing to the property owner, which shall be due and payable within thirty days. If the owner refuses or neglects to pay the bill, an itemized report in writing shall be made to the Planning Commission showing the Enforcement Costs and the demolishing or repairing of said buildings, structures and/or Marijuana eradication, including any salvage value relating thereto; provided, that before said report is submitted to the Planning Commission, a copy of the same shall be mailed together with a notice of the time when said report shall be heard by the Planning Commission for confirmation.

C. The Planning Commission shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs, and shall serve notice thereof as set forth in Government Code §38773.5(C). At the time and place fixed for receiving and considering the report, the Planning Commission shall hear and pass upon the reports of the Enforcement Costs and such other costs of abatement, together with any objections or protests raised by any of the persons liable to be assessed for the cost of abating the nuisance.

Thereupon, the Planning Commission may make such revision, correction or modification in the report, as it may deem just, after which, by motion, the report, as submitted or as revised, corrected or modified, shall be confirmed. The hearing may be continued from time to time. The decision

of the Planning Commission on all protests and objections, that may be made, shall be final and conclusive. Proof of said service of the Planning Commission's determination of Enforcement Costs and other costs of abatement shall be made by declaration under penalty of perjury filed with the city clerk.

D. Where costs and penalties go unpaid beyond 30 days, the Code Enforcement Officer shall take action to confirm the Enforcement Costs and other costs and record a lien against the Parcel and will attach as a lien until paid. Costs or expenses for which the City may be reimbursed shall begin to accrue at the time the City first receives a complaint regarding a problem on the property. Any lien recorded pursuant to Government Code §38773.5 shall not include administrative penalties assessed and shall be limited to the Enforcement Costs. However, upon entry of a second or subsequent civil or criminal action within a two year period finding an owner of a Parcel or a person described in paragraph (3) of subdivision (d) of Government Code §38772 is responsible for the condition that may be abated in accordance with this Chapter, the Court may order that person to pay treble the Enforcement Costs..

E. The Code Enforcement Officer shall notify the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, that a nuisance abatement lien will be recorded. The notice shall specify the amount of the lien, the name of the City, the date of the abatement order, the street address, the legal description and the assessors parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel. The notice shall be served by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. Such notice of lien for recordation shall be in the form substantially as follows:

NOTICE OF LIEN
(Claim of City of Yreka)

Pursuant to the authority vested by the provisions of Chapter 9.26 of the City of Yreka Municipal Code, the city manager (or his designee) of the City of Yreka did on or about (insert date), cause the premises hereinafter described [insert description of abatement action taken] to abate a public nuisance on said real property; and the Planning Commission of the City of Yreka did on (insert date), assess the cost of such abatement action taken; and the same has not been paid nor any part thereof; and that said City of Yreka does hereby claim a lien on premises in the amount of said assessment, to wit: the sum of $ (insert amount); and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The below described real property may be sold after three years by the tax collector for unpaid delinquent assessments.

The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Yreka, County of Siskiyou, State of California, and particularly described as follows:

(Insert description)

DATED: (insert date).

City Manager of the City of Yreka, California

(ACKNOWLEDGEMENT)

F. The Planning Commission may order a refund of all or part of the assessment paid pursuant to this Chapter if it finds that all or part of the assessment was erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with a city clerk within six months after the assessment became due and payable. The claim shall be verified by the person who paid the assessment, or the legal representative of such person.

G. After notice is given in accordance with subsection E of this section, the notice of lien shall be recorded in the Siskiyou County Recorder's office and shall thereafter constitute a lien on the real property for the expense of the abatement, the related administrative costs together with interest thereon.

H. In the event the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge containing the same information as the notice of lien shall be recorded in the Siskiyou County Recorder's office.

I. The City may enforce the nuisance abatement lien by an action for a money judgment.

J. An additional fee which shall be set by resolution of the city council shall be imposed on the owner of the Parcel at the conclusion of any matter in which a notice and order has been issued. This termination fee shall be calculated to recover the cost of closing the file, removing or placing liens, and other associated administrative costs. Costs shall be assessed at the conclusion of the abatement; provided, however, in the case of abatement by any method which takes more than six months, costs may be assessed at any time after six months, but in no event more than two times a year.

K. Enforcement Costs and expenses may be recovered even if the nuisance is corrected voluntarily, subsequent to the issuance of an abatement order. No fees shall be due and owing if it is administratively determined that no nuisance exists. All fees shall be a personal obligation of the owner and a lien upon the Parcel and are due and payable within thirty days of issuance of the notice and order or closing of the file respectively. Any fee not paid within that time shall be payable to the City.

Section 4. Severability

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this ordinance and adopted this Chapter and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases were to be declared invalid or unconstitutional.

Section 5. Inconsistency.

Any provisions of the Yreka Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed for the purposes of the enforcement of this Chapter.

Section 6. CEQA Exemption.

The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment. In addition, the ordinance is exempt from environmental review pursuant to the general rule of the California Environmental Quality Act, which exempts minor alterations to land use limitations that do not result in changes in land use or density pursuant to CEQA Guidelines Section 15305. Finally this Ordinance is exempt because it is an urgency Ordinance necessary to protect the City from a current and immediate threat to the public health, safety and welfare. Based on the information contained in the staff report and accompanying attachments and exhibits, the City Council hereby finds:

1. The proposed project will not result in a significant adverse effect on the environment and will support the public health, safety, and welfare

2. The Ordinance and its provisions are consistent with the goals and policies of the General Plan.

3. The Ordinance provides regulations for Marijuana Cultivation and this minor alteration to land use limitations that do not result in changes in land use or density pursuant to CEQA Guidelines Section 15305.

4. This is an urgency Ordinance necessary to protect the City from a current and immediate threat to the public health, safety and welfare.

Section 7. Publication of Codification.

At least five (5) days prior to its adoption and within fifteen (15) days after its adoption, a summary of this ordinance, in a form approved by the City Attorney, shall be published once in a newspaper of general circulation printed and published in the County of Siskiyou.

Section 8. Effective Date.

This ordinance shall be effective thirty-one (31) days from and after its adoption.

Section 9. Implementation.

The City Council hereby authorizes and directs the City Manager to take any action and sign any documents necessary to implement this Ordinance.

Section 10. Execution.

The Mayor and City Clerk are authorized to subscribe this ordinance where indicated below to evidence its approval by the City Council.
Introduced at a regular meeting of the City Council held May 19, 2016, and adopted as an ordinance of the City of Yreka at a regular meeting of the City Council held June 2, 2016 by the following vote:

AYES: Baird, Foster, Freeman & Mercier

NOES: Simmen

ABSENT: None

John Mercier, Mayor

Attest:

Elizabeth E. Casson, City Clerk

APPROVED AS TO FORM

DOHN HENION, City Attorney

CITY OF YREKA
CITY COUNCIL AGENDA MEMORANDUM

To: Yreka City Council

Prepared by: Steven W. Baker, City Manager

Agenda title: Discussion/Possible Action: ADOPT AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YREKA ENACTING CHAPTER 9.26 ENTITLED "**MEDICAL MARIJUANA CULTIVATION, DISTRIBUTION AND DELIVERY PROHIBITED**" PROHIBITING THE CULTIVATION, DISTRIBUTION AND DELIVERY OF MARIJUANA WITHIN THE CITY OF YREKA, AND FINDING THE ADOPTION OF THIS ORDINANCE TO BE EXEMPT FROM CEQA.

Meeting date: June 2, 2016

Discussion:

At its meeting held May 19, 2016, the Council voted 4-1 to approve the introduction of the Ordinance with no changes. This is the second-reading of Ordinance 842.

Recommended Action: Staff recommends that the City Council adopt Ordinance #842 below.

If the Council wishes to proceed with adoption of the ordinance, the action then would be to:

***Waive the reading of the body of the Ordinance and adopt Ordinance by title*:**

ADOPT ORDINANCE # 842 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YREKA ENACTING CHAPTER 9.26 ENTITLED "**MEDICAL MARIJUANA CULTIVATION, DISTRIBUTION AND DELIVERY PROHIBITED**" PROHIBITING THE CULTIVATION, DISTRIBUTION AND DELIVERY OF MARIJUANA WITHIN THE CITY OF YREKA, AND FINDING THE ADOPTION OF THIS ORDINANCE TO BE EXEMPT FROM CEQA.

Approved by: _____
Steven Baker, City Manager