

**NEVADA COUNTY
SHERIFF'S OFFICE**



**KEITH ROYAL
SHERIFF/CORONER
PUBLIC ADMINISTRATOR**

November 1, 2011

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, CA 95959

DATE OF MEETING: November 8, 2011

SUBJECT: Discussion and Request for Direction Regarding Medical Marijuana Cultivation Ordinance

RECOMMENDATION: Discuss and consider issuance of a Board Order directing County Counsel and other County departments to work with Sheriff's Office and other County Departments to develop a medical marijuana cultivation ordinance

FUNDING: As part of the research required to prepare a proposed marijuana cultivation ordinance, staff will develop information regarding the costs and funding sources associated with implementation and enforcement of the proposed ordinance

BACKGROUND: In 1996, voters approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996") and in 2004, the Legislature enacted SB 420 in 2004 (codified as California Health and Safety Code Section 11362.7 *et seq.*) to clarify the scope of Proposition 215. The intent of these laws was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. However, this legislation was not intended to supersede legislation that prohibits persons from engaging in conduct that endangers others, to allow unlimited quantities of marijuana to be grown anywhere, or to preclude local agencies from adopting or enforcing local ordinances which are consistent with Proposition 215 and SB 420. Moreover, local agencies are generally allowed the flexibility to regulate land uses and to address nuisance conditions to protect the health, safety and welfare of their constituents.

On the other hand, the Federal Controlled Substances Act, 21 U.S.C. sections 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.

Letter to the Board of Supervisors

November 2, 2011

Page 2

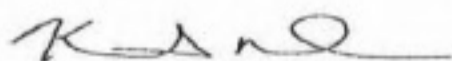
Therefore it remains unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no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

Since the approval of Proposition 215 and the adoption of SB 420, Nevada County has experienced an exponential increase in marijuana cultivation, both individually and collectively, across all areas in the County. The County's unique geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to marijuana cultivation. These marijuana grows range in size from a few plants to several hundred plants, and create increased risk of criminal activity, access to and recreational consumption by minors, degradation of the natural environment, strong pungent odors from maturing plants, excessive light and noise, and other nuisances to surrounding property owners, and generally disrupt the rural quality of life in Nevada County. The rapid expansion of these grows, both legal and illegal, and the lack of regulations to address the amount, location and manner in which these grows may be operated has resulted in numerous nuisance complaints from neighboring property owners. In addition, the large volume of marijuana gardens throughout the County has placed an enormous strain on the County's law enforcement and prosecutorial resources.

To address the above issues, while respecting the continuing conflicts between state and federal law, other local agencies have adopted local regulations designed to address and control the negative impacts associated with marijuana cultivation. The most common approach in other rural counties, including Mendocino, Tehama, and Butte Counties has been to adopt regulations which require registration or permitting of marijuana gardens, limit the number of plants that may be grown and/or the square footage of the growing area, establish fencing and setback requirements, establish minimum distance requirements from schools, parks and other youth-oriented uses, and other restrictions designed to reduce the various nuisance activities associated with marijuana gardens. These "bright line" rules have also been a significant and valuable tool in law enforcement efforts to control illegal marijuana grows and reduce the number of unauthorized marijuana gardens.

I am requesting that the Board consider adoption of medical marijuana cultivation regulations for Nevada County and issue a Board Order directing County Counsel and other County departments to work with my office to develop a proposed ordinance. To assist the Board in its discussion of this issue and to demonstrate how these issues might be addressed, attached is a sample marijuana cultivation ordinance based on examples from other rural communities.

Respectfully submitted,



Keith Royal, Sheriff
Sheriff/Coroner



ORDINANCE No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN ORDINANCE ADDING CHAPTER _____ TO THE NEVADA COUNTY GENERAL CODE PERTAINING TO MEDICAL MARIJUANA CULTIVATION

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

Chapter _____ of the Nevada County General Code is hereby added to read as follows:

"Section _____ Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code section 25845, the Board of Supervisors does enact this Chapter, which shall be known and may be cited as "Nevada County Cultivation Ordinance."

Section _____ Findings and Purpose

- (A) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996").
- (B) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. Proposition 215 further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
- (C) In 2004, the Legislature enacted SB 420 in 2004 (codified as California Health and Safety Code Section 11362.7 *et seq.*) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.

- (D) California Health & Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.
- (E) The Federal Controlled Substances Act, 21 U.S.C. sections 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. 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.
- (F) The County's unique geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to marijuana cultivation. Marijuana growers can achieve a high per-plant yield because of the County's favorable growing conditions. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams (about one-half pound) to 846 grams (nearly two pounds). Based on law enforcement seizures, yields in Nevada County have tended to be at the higher end of this range. The "street value" of a single cannabis plant is substantial. Per pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach \$2,000 to \$5000. A single marijuana plant cultivated within the County can thus yield \$4,000 or more in saleable marijuana.
- (G) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Nevada County can adversely affect the health, safety, and well-being of the County and its residents. 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.
- (H) Cultivation of any amount of marijuana at locations or premises within 1,000 feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any

amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana.

- (I) As recognized by the Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (J) It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with State law, which balances the needs of medical patients and their caregivers and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Nevada. This Chapter is intended to be consistent with Proposition 215 and Senate Bill 420 and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations regarding the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in Nevada County.
- (K) The limited right of 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 County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Nevada County.
- (L) 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 or Federal law. No provision of this Chapter shall be deemed to be a defense or immunity to any action brought against any person in Nevada County by the Nevada County District Attorney, the Attorney General of the State of California, or the United States of America.

Section Definitions. As used herein the following definitions shall apply:

- (a) "Child Care Center" means any licensed child care center, daycare center, or childcare home, or any preschool.
- (b) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (c) "Cultivation" means the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

- (d) "Enforcing Officer" means the Sheriff, or his authorized deputies or designees, who is authorized to enforce this Chapter.
- (e) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.
- (f) "Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Nevada, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- (g) "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code).
- (h) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.
- (i) "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.
- (j) "Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this Chapter.
- (k) "Primary caregiver" shall have the meaning set forth in Proposition 215 and Senate Bill 420.
- (l) "Qualified patient" shall have the meaning set forth in Proposition 215 and Senate Bill 420.
- (m) "Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Nevada or the authorized representatives thereof.
- (n) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.
- (o) "School Bus Stop" means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.

- (p) "School Evacuation Site" means any location designated by formal action of the governing body, Superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of any emergency or other incident at the school.
- (q) "Youth-oriented facility" means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.
- (r) "Zip-ties" means plastic ties with individualized numbers stamped on them, issued by the Nevada County Sheriff's Office for the purpose of identifying a legal marijuana plant.

Section Nuisance Declared.

- (A) The cultivation of more than the following number of marijuana plants, either indoors or outdoors, on any Premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.
 - (1) If the Premises is located in a residential zone, no more than six (6) marijuana plants, whether mature or immature, shall be cultivated on the Premises.
 - (2) If the Premises is located in any other zone, no more than twenty-five (25) marijuana plants, whether mature or immature, shall be cultivated on the Premises.

The foregoing limitations shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, these limitations shall be imposed notwithstanding any assertion that the person(s) cultivating the marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

- (B) The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any Premises located within one thousand (1,000) feet of any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.
 - (1) Such distance shall be measured in a straight line from the boundary of the Premises upon which marijuana is cultivated to the boundary line of the Premises upon which the school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is located.
 - (2) If the premises is ____ (__) acres or greater in size, then such distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by subdivision _____, to the boundary line of the Premises upon which the school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is located.

- (C) The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any Premises located as follows is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

- (1) Outdoors within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel.
- (2) Outdoors in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
- (3) In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.
- (4) Outdoors within fifty (50) feet of a legal parcel under separate ownership.

The distance between the above-listed uses in Section _____ and marijuana that is being cultivated shall be measured in a straight line from the nearest point of the fence required in Section _____ 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 Sections _____ and _____ to any residential structure shall be measured from the fence required in Section _____ to the nearest exterior wall of the residential structure.

- (D) The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any Premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless all of the following conditions are satisfied:
- (1) The person(s) owning, leasing occupying or having charge or possession of any Premises have registered the Premises with the Nevada County Sheriff's Office, and provided all of the following current information and documentation to the Sheriff's Office:
 - (a) The location of the Premises where the cultivation of medical marijuana will occur.
 - (b) The name of each person owning, leasing, occupying or having charge or possession of the Premises;
 - (c) The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;
 - (d) A copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;
 - (e) The number of marijuana plants cultivated on the premises; and,
 - (f) Signed statements from the owner(s) of the Premises and each person leasing, occupying or having charge or possession of the Premises acknowledging that registration does not confer upon such persons immunity from prosecution under Federal or State law.

(g) If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, the person(s) who is cultivating marijuana on such parcel shall (a) give written notice to the legal owner of the parcel prior to commencing cultivation of marijuana on such parcel and (b) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. The Sheriff may prescribe forms for such letters.

(h) Signed statements from the owner(s) of the Premises and each person leasing occupying or having charge or possession of the Premises authorizing the Sheriff, Fire District, and/or other appropriate County employees or agents or their designees, including building and fire inspectors, to enter the property only during normal business hours for the purpose of examining the location to confirm compliance with this Chapter.

(i) Such other information and documentation as the Sheriff's Office determines is necessary to ensure compliance with State law and this Chapter.

This information and documentation shall be received in confidence, and shall be used or disclosed only for the purposes of administration or enforcement of this Chapter or State law, or as otherwise required by law.

The Board of Supervisors may, by Resolution, establish a fee for such registration in accordance with all applicable legal requirements.

(2) The indoor or outdoor cultivation of marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to objectionable odors.

(3) 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) 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.

(5) The indoor or outdoor cultivation of marijuana shall not exceed the noise level standards as set forth in the County General Plan.

(6) All marijuana grown outdoors must be within a secure, opaque fence at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence. Bushes or hedgerows shall not constitute an adequate fence under this subdivision.

(7) Wherever medical marijuana is grown, a copy of a current and valid, State-issued medical marijuana identification card or physician recommendation must be displayed in such a manner as to allow law enforcement officers to easily see the card without having to enter any building of any type except as set forth in Section _____.

(8) Each building or outdoor area in which the marijuana is cultivated shall be set back from the boundaries of the premises as follows:

- (a) If the Premises is twenty (20) acres in size or less, each cultivation building or area shall be set back at least 100 feet from all boundaries of the Premises.
- (b) If the Premises is greater than twenty (20) acres in size, each cultivation building or area shall be set back at least 300 feet from all boundaries of the Premises.
- (c) Such setback distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by subdivision ____, to the boundary line of the Premises.

(9) No person owning, leasing, occupying or having charge or possession of any Premises within the County shall cause, allow, suffer or permit such Premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter.

Nothing herein shall limit the ability of Fire District or other appropriate County employees or agents from entering the property to conduct the inspections authorized by or necessary to ensure compliance with this Chapter or the ability of the Sheriff to make initial inspections or independent compliance checks. The Sheriff is authorized to determine the number and timing of inspections that may be required.

Section "Zip-Tie" Provision

- (A) For the convenience of the property owner and to assist in the enforcement of this Ordinance, and to avoid unnecessary confiscation and destruction of medicinal marijuana plants, marijuana grown for medicinal purposes in unincorporated Nevada County may have "zip-ties" issued by the Nevada County Sheriff's Department. For proper identification, such "zip-ties" should be securely attached to the base of individual flowering marijuana plants.
- (B) "Zip-Ties" can be obtained through the Nevada County Sheriff's Department. All applicants for "zip-ties" must present a State-issued medical marijuana identification card or a valid medical recommendation. The fee for the "zip-ties" shall be set by the Nevada County Board of Supervisors in accordance with all applicable laws and regulations.

Section Change in Land Use. The County shall encourage any person proposing to construct or operate a new or relocated school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility to consider whether the proposed location of such use is within one thousand (1,000) feet of a registered premises upon which marijuana is cultivated. Upon request, the Sheriff's Office shall inform any person proposing to construct or operate a new or relocated school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility regarding whether there is a registered premises upon which marijuana is cultivated within one thousand (1,000) feet of the proposed location of such use, and, if so, shall also inform the person, owning, leasing, occupying, or

having charge or possession of the registered premises that such a use is being proposed within (1,000) feet of the premises.

Section _____ Notice to Abate Unlawful Marijuana Cultivation. Whenever the Enforcing Officer determines that a public nuisance as described in this Chapter exists on any premises within the unincorporated area of Nevada County, he or she is authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a "Notice to Abate Unlawful Marijuana Cultivation."

Section _____ Contents of Notice

The Notice set forth in section _____ shall be in writing and shall:

- (A) Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the County Assessor, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable.
- (B) Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property.
- (C) Identify such property by reference to the Assessor's Parcel Number.
- (D) Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the Enforcing Officer to be a public nuisance described in this Chapter.
- (E) Describe the unlawful marijuana cultivation that exists and the actions required to abate it.
- (F) Contain a statement that the owner or occupant is required to abate the unlawful marijuana cultivation within fourteen (14) calendar days after the date that said Notice was served.
- (G) Contain a statement that the owner or occupant may, within ten (10) calendar days after the date that said Notice was served, make a request in writing to the Clerk of the Board of Supervisors for a hearing to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this Chapter.
- (H) Contain a statement that, unless the owner or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within the time prescribed in the Notice, the Enforcing Officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

Section _____ Service of Notice to Abate

The Notice set forth in Section _____ shall be served in the following manner:

- (A) By delivering it personally to the owner and to the occupant, or by mailing it by regular United States mail, together with a certificate of mailing, to the occupant

of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that:

- (a) If the records of the County Assessor show that the ownership has changed since the last equalized assessment roll was completed, the Notice shall also be mailed to the new owner at his or her address as it appears in said records, or
- (b) In the event that, after reasonable effort, the Enforcing Officer is unable to serve the Notice as set forth above, service shall be accomplished by posting a copy of the Notice on the real property upon which the nuisance exists as follows: Copies of the Notice shall be posted along the frontage of the subject property, and at such other locations on the property reasonably likely to provide notice to the owner and any person known by the Enforcing Officer to be in possession of the property. In no event shall fewer than two (2) copies of the Notice be posted on a property pursuant to this section.

(B) The date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable.

Section Administrative Review.

(A) The Board of Supervisors delegates the responsibility to conduct a lien hearing in conformance with this Chapter to a Hearing Officer.

(B) Any person upon whom a Notice to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the Enforcing Officer that the conditions set forth in the Notice constitute a public nuisance to the Hearing Officer, or may show cause before the Hearing Officer why those conditions should not be abated in accordance with the provisions of this Chapter. Any such administrative review shall be commenced by filing a written request for a hearing with the Sheriff's Office within ten (10) calendar days after the date that said Notice was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this Section, the findings of the Enforcing Officer contained in the Notice shall become final and conclusive on the eleventh day following service of the Notice.

(C) Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the Sheriff's Office shall set a hearing date not less than seven (7) days nor more than thirty (30) days from the date the request was filed. The Sheriff's Office shall send written notice of the hearing date to the requesting party, to any other parties upon whom the Notice was served, and to the Enforcing Officer.

(D) Any hearing conducted pursuant to this Chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which

responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(E) The Hearing Officer may continue the administrative hearing from time to time.

(F) The Hearing Officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the Notice to Abate Unlawful Marijuana Cultivation. The Hearing Officer shall issue a written decision in the form of a resolution, which shall include findings relating to the existence or nonexistence of the alleged unlawful marijuana cultivation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the Notice. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the Notice was served, and the enforcing officer.

(G) The decision of the Hearing Officer shall be final and conclusive.

Section Liability for Costs.

(A) In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist shall be liable for all costs incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Chapter, whether those costs are incurred prior to, during, or following enactment of this Chapter;

(B) In any action by the Enforcing Officer to abate unlawful marijuana cultivation under this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

Section Abatement by Owner or Occupant. Any owner or occupant may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the Enforcing Officer.

Section Enforcement.

(A) Whenever the Enforcing Officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within fourteen (14) days of the date of service of the Notice to Unlawful Marijuana Cultivation, unless timely appealed, or of the date of the decision of the Hearing Officer requiring such abatement, the Enforcing Officer may take one or more of the following actions:

- (1) Enter upon the property and abate the nuisance by County personnel, or by private contractor under the direction of the Enforcing Officer. The Enforcing Officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the Board of Supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or
- (2) Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.
- (3) Issue administrative citations in accordance with Section L-II 5.23, et seq. of the Nevada County Land Use and Development Code.

Section Accounting. The Enforcing Officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Hearing Officer showing the cost of abatement and the administrative costs for each parcel.

Section Notice of Hearing on Accounting; Waiver by Payment. Upon receipt of the account of the Enforcing Officer, the Sheriff's Office shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than five (5) business days after the date of mailing of the notice, the Hearing Officer will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the enforcing officer prior to the time set for the hearing by the Hearing Officer. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

Section Hearing on Accounting.

- (A) At the time fixed, the Hearing Officer shall meet to review the report of

the Enforcing Officer. An owner may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.

- (B) The report of the Enforcing Officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.
- (C) The Hearing Officer shall also determine whether or not the owner(s) had actual knowledge of the unlawful marijuana cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner(s) did not have actual knowledge of the unlawful marijuana cultivation, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such parcel or otherwise attempted to be collected from the owner(s) of such parcel.

Section _____ Modifications. The Hearing Officer shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report by resolution.

Section _____ Special Assessment and Lien. The Board of Supervisors may order that the cost of abating nuisances pursuant to this Chapter and the administrative costs as confirmed by the Board be placed upon the County tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the Government Code; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to section 25845 of the Government Code.

Section _____ Summary Abatement.

Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections _____ would not result in abatement of that nuisance within a short enough time period to avoid that threat, the Enforcing Officer may direct any officer or employee of the County to summarily abate the nuisance. The Enforcing Officer shall make reasonable efforts to notify the persons identified in Section _____ but the formal notice and hearing procedures set forth in this Chapter shall not apply. No summary abatement shall occur prior to consultation with the Office of County Counsel. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections _____ and _____.

Section No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Nevada any duty to issue a Notice to Abate Unlawful Marijuana Cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation."

SECTION II:

Compliance with CEQA. The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION III:

Severability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections,

subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SAMPLE

SECTION IV:

This Ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and it shall become operative on the _____ day of _____, 20____, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the _____, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the _____ day of _____, _____, by the following vote of said Board:

Ayes: Supervisors

Noes:

Absent:

Abstain:

ATTEST:

Donna R. Landi
Interim Clerk of the Board of Supervisors

By: _____

Chair

DATE	COPIES SENT TO