

# The County of Yuba

## Community Development & Services Agency

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**To:** Yuba County Board of Supervisors

**From:** Kevin Mallen, CDSA Director 

**Date:** December 11, 2012

**Subject:** Repeal and Reenact as Amended Chapter 7.40, Marijuana Cultivation Ordinance

### **Recommendation:**

Adopt the attached ordinance repealing and reenacting as amended Chapter 7.40 of the Yuba County Ordinance Code relating to Marijuana Cultivation.

### **Background:**

Chapter 7.40 of the Yuba County Ordinance Code, Marijuana Cultivation, went into effect on June 1, 2012 and a handful of clarifying amendments to the Chapter became effective on August 10, 2012. Chapter 7.40 is an ordinance created to reduce conditions associated with marijuana cultivation that create a public nuisance. On June 29, 2012, a lawsuit was filed by Yuba County Growers Association, Sam McConnell, Yuba Patient Collective, Lew Neal, Old Crow Farm Collective, Kathie Thelen, and Déjà vu Collective against the County in reaction to the County's adoption of Chapter 7.40.

### **Discussion:**

Subsequent to the lawsuit being filed, the Courts requested that the plaintiffs and the County meet and see if the parties could meet a mutual resolution. The Marijuana Cultivation Ad Hoc Committee (consisting of Supervisors Griego and Nicoletti, CDSA staff, Sheriff, and District Attorney), with guidance from County Counsel and outside counsel, was utilized to discuss the plaintiff's requests and ultimately utilized to advise on whether a mutual resolution to the lawsuit could be reached. After several rounds of negotiations with the plaintiffs, the attached amended Chapter 7.40 is being recommended to the full Board for their consideration. This proposed amended Chapter 7.40 has already received concurrence from the plaintiffs that if approved by the Board will result in their dismissal of the entire lawsuit with prejudice.

Attached to this memo is a document that provides the tracked changes from the current version of Chapter 7.40 to the proposed amended version. A summary of the changes are as follows:

- Section 7.40.140, add a definition for Accessory Structure and refine the definition of Defined Area of Cultivation.

- Sections 7.40.300 and 7.40.310, clarified the legally established residence and physical and legal place of residence requirement.
- Section 7.40.300, change exception limits from a mature plant and square footage limit to a mature plant and total plant limit. In addition, broke the 1 to 20 acre category into 1 to 5 acre and 5 to 20 acre. Also, adjusted the mature marijuana plant counts up, with a greater increase on the larger parcels. However, the outdoor mature plant limit of 6 on parcels less than 1 acre remains unchanged.
- Sections 7.40.300 and 7.40.310, increase the square footage limitation within a residence from 50 to 100 square feet. However, still retain the 6 plant limit.
- Section 7.40.320, increase the outdoor cultivation setback requirements on the larger parcels due to the increased plant count.
- Section 7.40.330, on parcels greater than 5 acres in size allow a combination of chain link fencing and vegetation or natural topography screening in lieu of solid fencing.
- Section 7.40.410, rewrote the section to provide better clarity on intent.
- Section 7.40.420, deleted statement that violating this Chapter is subject to misdemeanor charges.
- Section 7.40.440, added language to provide clarity as to Administrative Penalty process including the amount of the penalties and the appeal process.

**Committee Action:**

This item was prepared as a result of direction from the Marijuana Cultivation Ad Hoc Committee.

**Fiscal Impact:**

None when comparing amended to current Chapter 7.40

**Attachments:**

Tracked Changes between current and amended Chapter 7.40

Ordinance, Repealing and Reenacting as Amended Chapter 7.40

#### 7.40.140 Definitions

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

- a. "Accessory Structure" means a separate and permitted structure located on the same parcel as the residence or an attached garage separated by a firewall.
- a.b. "Code" means the Yuba County Ordinance Code
- b.c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
- e.d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of an Administrative Law Judge (ALJ), the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from the any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
- d.e. "County" means the County of Yuba
- e.f. "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.
- f.g. "Defined Area of Cultivation" means a single indoor area per residence or accessory structure or single outdoor area defined by ~~of rectangular or circular shape with visible~~ boundaries, wherein all portions of cultivation, including all of the marijuana plant canopy, resides within and that vertically projects no higher than the fence or wall screening the cultivation from public view.

### ARTICLE 3 EXCEPTIONS, INDOOR, OUTDOOR, AND FENCING

#### 7.40.300 Exceptions

This ordinance shall not apply to cultivation where all of the following conditions are met:

- a. The cultivation occurs on a parcel with an occupied legally established ~~residence~~dwellling, and
- b. The cultivation is conducted by one or more qualified patients or primary caregivers and at least one of the plants being cultivated is for the qualified patient or primary caregiver who occupies the dwelling as their physical and legal place of residence, and
- c. The defined areas of cultivation ~~is~~are in accordance with this section and sections

Tracked Changes between current Chapter 7.40 (as amended on 7-10-12)  
and proposed Chapter 7.40

7.40.310, 7.40.320, and 7.40.330 of this eChapter, there is not more than one outdoor defined area of cultivation per parcel and not more than one indoor defined area of cultivation as allowed for in this Chapter, and

d. The cultivation does not ~~en~~erach beyond the defined area(s) of cultivation or exceed the marijuana plant quantities listed below:

1. For parcels less than one ~~-(1)~~ acre in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 18 marijuana plants. Of that total, only 12 can be mature marijuana plants. A maximum of 6 of the 12 mature marijuana plants can be cultivated outdoors. ~~defined areas of cultivation that do not exceed one hundred (100) square feet in total, and do not contain more than 6 mature marijuana plants in total.~~

2. For parcels at least one (1) acre but not greater~~less~~ than twenty~~five~~ (20) acres in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 30 marijuana plants. Of that total, only 18 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors. ~~defined areas of cultivation that do not exceed two hundred and fifty (250) square feet in total, and do not contain more than 12 mature marijuana plants in total.~~

2.3. For parcels five (5) acres but less than twenty (20) acres in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 60 marijuana plants. Of that total, only 36 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors.

3.4. For parcels larger than twenty (20) acres or more in size with one residence, there is a combined limit of indoor and outdoor cultivation of ~~defined areas of cultivation that do not exceed five hundred (500) square feet in total, and do not contain no more than 25 mature~~99 marijuana plants. Of that total, only 60 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors. ~~in total.~~

4.5. For parcels containing multiple residences, in addition to the parcel limitations identified in 7.40.300d1, 2, and 3, and 4, an additional indoor defined area of cultivation within each of the secondary residences that ~~does~~ not exceed one hundred ~~fifty~~ (5100) square feet of area and do not contain more than 6 mature marijuana plants per residence.

### 7.40.310 Indoor Cultivation

~~This ordinance shall not apply to indoor cultivation where all of the following conditions are met:~~

a. ~~The~~Indoor cultivation shall not occur outside ~~cultivation~~ Only occurs in a single defined area of cultivation within a per-structure as defined by 7.40.140f and, ~~is~~shall not be in public view, and shall not be accessible to minors. The structure shall be located on a parcel with a legally established residence, occupied by a qualified patient or

primary caregiver as their physical and legal place of residence. Additionally, the structure indoor cultivation shall not be accessible to minors and shall not be in violation of the County's Building and Zoning Ordinances by conforming to one of the following:

1. ~~Indoor cultivation of marijuana shall occur i~~n an accessory structure that is greater than 120 square foot in size and has received an approved building permit from Yuba County.
2. ~~Indoor cultivation of marijuana shall occur i~~n an accessory structure that is 120 square foot or less in size, and all of the following requirements are met:
  - i. The structure is not located within the front yard setback, is setback from the property line a distance consistent with the zoning the parcel is located within, and in no case located within five (5) feet of a property line, and
  - ii. The structure is one story in height and consistent with the zoning height restriction, and
  - iii. The structure has a roof, floor, and walls constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials, and
  - iv. All necessary building permits are obtained, including those needed for any plumbing, mechanical or electrical equipment.
3. ~~Indoor cultivation of marijuana shall occur w~~Within the ~~habitable portion of a residence, and all of the following requirements are met:~~
  - i. The A qualified patient or primary caregiver occupies the dwelling as their physical and legal place of residence, residence is occupied by the qualified patient or primary care giver, and
  - ii. ~~There is no area to cultivate outdoors that doesn't violate the requirements of 7.40.320 or there is no existing accessory structure that conforms to the requirements of 7.40.310, and~~
  - iii.ii. The lighting used for cultivation does not exceed 1200 watts, and
  - iv.iii. No gas products (CO<sub>2</sub>, butane, etc.) are used, and
  - v.iv. The cultivation is not located within the kitchen, and
  - v. The residence maintains at least one operable bathroom, and
  - vi. —
  - vii. — The defined area of cultivation is not more than one hundredfifty (~~5100~~)-square feet ~~in~~
  - vii.vi. — ~~area~~ and contains no more than 6 ~~mature~~ marijuana plants.

b. No portion of any structure shall be altered unless a building permit has first been obtained, and under no circumstance shall any alteration create a fire-life-safety hazard.

#### **7.40.320 Outdoor Cultivation**

- a. Outdoor cultivation of marijuana shall not occur outside a single defined area of cultivation, ~~(as defined by 7.40.140f) per parcel, and shall not be in public view, shall be surrounded by a fence as required by 7.40.330, and shall not be accessible to minors.~~
- b. All outdoor cultivation shall not be located on parcels in a manner that increases the potential to create a public nuisance, and shall reduce the potential by:

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and proposed Chapter 7.40

1. First and foremost, locating the area of cultivation on the parcel as far away as possible from neighboring residences, and
  2. Locating the area of cultivation on the parcel as close as possible to the cultivator's residence for security purposes, but taking into consideration the need to keep the cultivation away from neighboring residences, and
  3. For parcels less than one (1) acre in size, locating the area of cultivation no greater than twenty (20) feet from the cultivator's residence.
- c. Outdoor cultivation of marijuana shall not be located within:
1. Ten (10) feet of the property line and within three hundred (300) feet of a school, school bus stop, park, or youth-oriented facility on parcels less than one (1) acre in size ~~with outdoor cultivation on one hundred (100) or less square feet.~~

2. Fifty (50) feet of the property line and within six hundred (600) feet of a school, school bus stop, park, or youth-oriented facility on parcels one (1) acre but less than five (5) acres in size with outdoor cultivation on more than one hundred (100) square but no more than two hundred and fifty (250) square feet.

2.3. One hundred (100) feet of the property line and within one thousand (1,000) feet of a school, school bus stop, park, or youth-oriented facility on parcels five (5) acres but less than twenty (20) acres in size.

3.4. ~~One~~ Two hundred (~~1~~200) feet of the property line and within one thousand (1,000) feet of a school, school bus stop, park, or youth-oriented facility on parcels twenty (20) acres or more in size with outdoor cultivation on more than two hundred and fifty (250) square feet but no more than five hundred (500) square feet.

d. The distances specified in this section shall be the horizontal distance measured in a straight line to the closest area in which the medical marijuana is cultivated.

#### 7.40.330 Fencing

Outdoor cultivation shall be fully surrounded by a solid fence at least six (6) feet but not greater than (8) feet in height with a locking gate and conform to the following:

a. Fencing materials shall be in compliance with Section 7.40.140h<sub>i</sub>, and

a.b. Location of fence shall meet zoning setback and height requirements, and

b.c. Fences over six (6) feet in height will require proof of an approved building permit, and

e.d. Marijuana plant(s) shall not be higher than the fence, and

d.e. The fence and gate must be adequately secure to prevent unauthorized entry and keep the area out of reach of minors.

e.f. Bushes or hedgerows alone shall not constitute an adequate fence under this Chapter. However, for parcels greater than 5 acres in size, a combination of mature vegetation or natural topography that keeps the cultivation out of public view in combination with a securable six foot tall chain link fence may be substituted for a solid fence.

## ARTICLE 4 ENFORCEMENT

Tracked Changes between current Chapter 7.40 (as amended on 7-10-12)  
and proposed Chapter 7.40

#### **7.40.410 Right of Entry/Inspection**

To enforce the provision of this Code, an 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 Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant. Whenever necessary to enforce the provision of this Code, or whenever an Enforcement Officer has reasonable cause to believe that there exist in or upon any parcel any such violation which makes such parcel unsafe, dangerous or hazardous, the Enforcement Officer may enter upon such premises at a reasonable time to inspect the same or to perform any duty imposed upon the Enforcement Officer by this Code. If such entry is refused, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

#### **7.40.420 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 guidelines 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.
- ~~b. Each person violating this Chapter is subject to being charged a misdemeanor for said violation and, upon conviction, punishable up to a \$1,000 fine or 1 year in jail or both a fine and jail.~~

#### **7.40.440 Penalties and 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 and specifically by Chapter 7.36 of the Yuba County Ordinance Code.
- b. 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. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:

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1. A penalty of \$100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
  2. A penalty of \$200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
  3. A penalty of \$500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.
- c. For the purpose of calculating the Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation. In addition, each marijuana plant in excess of the exceptions contained in Section 7.40.300 shall be charged as a separate violation.
  - d. The Administrative Penalty, pursuant to this Section, shall begin to accrue immediately upon issuance of a Notice and Order to Abate Public Nuisance and continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the accrual of the Administrative Penalty shall be stayed during the pendency of the hearing.
  - e. Any person who has received a Notice and Order to Abate Public Nuisance may request an appeal within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.
  - a.f. As authorized by Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, the court may order the owner to pay treble the costs of abatement.
  - b.g. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

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**THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF  
CALIFORNIA DOES ORDAIN AS FOLLOWS:**

Section 1. This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.40 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

**CHAPTER 7.40**

**MARIJUANA CULTIVATION**

**Sections**

- 7.40.100 Authority**
- 7.40.110 Purpose & Intent**
- 7.40.120 Findings**
- 7.40.130 Scope**
- 7.40.140 Definitions**
- 7.40.200 Conditions Creating Public Nuisance**
- 7.40.300 Exceptions**
- 7.40.310 Indoor Cultivation**
- 7.40.320 Outdoor Cultivation**
- 7.40.330 Fencing**
- 7.40.400 Enforcement Authority**
- 7.40.410 Right of Entry / Inspection**
- 7.40.420 Violations**
- 7.40.430 Responsibilities**
- 7.40.440 Penalties and Remedies**
- 7.40.450 Private Right of Action**
- 7.40.460 Enforcement Costs**
- 7.40.470 Severability**

## ARTICLE I GENERAL PROVISIONS

### 7.40.100 Authority

Pursuant to authority granted by Article XI Section 7 of the California Constitution, Section 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

### 7.40.110 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 governing the number and location of marijuana plants cultivated by qualified patients and their caregivers within the Board's jurisdictional limits.

### 7.40.120 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. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.
- d. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided 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.
- e. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and 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 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 Ca1.4<sup>th</sup> 274.
- f. The County's geographic and climatic conditions, which include dense forested areas

- receiving substantial precipitation, 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.
- g. The strong distinctive odor of marijuana plants may create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and/or armed robbery.
  - h. 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 the County has ordinances currently in place to minimize the smells associated with raising livestock.
  - i. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, 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.
  - j. 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 County 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 unincorporated area of Yuba County.
  - k. 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 County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.
  - l. Children (minor 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).

#### **7.40.130 Scope**

The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Yuba.

#### 7.40.140 Definitions

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

- a. "Accessory Structure" means a separate and permitted structure located on the same parcel as the residence or an attached garage separated by a firewall.
- b. "Code" means the Yuba County Ordinance Code
- c. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
- d. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of an Administrative Law Judge (ALJ), the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
- e. "County" means the County of Yuba
- f. "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.
- g. "Defined Area of Cultivation" means a single indoor area per residence or accessory structure or single outdoor area defined by visible boundaries, wherein all portions of cultivation, including all of the marijuana plant canopy, resides within and that vertically projects no higher than the fence or wall screening the cultivation from public view.
- h. "Enforcing Officer" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.
- i. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "fence" does not include retaining walls.
- j. "Indoors" means within a fully enclosed structure, with a solid roof, floor, and walls. The structure must be securable against unauthorized entry and constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- k. "Marijuana" means all parts of the plant *Cannabis sativa* L., 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.

- l. "Marijuana plant" means any mature or immature marijuana plant including the stalks of the plant, or any marijuana seedling, that is capable of producing marijuana. A "mature" marijuana plant is one whose sex can be determined by visual inspection.
- m. "Minor" means a person less than 18 years of age.
- n. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.
- o. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.
- p. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Section 11362.7(d), and as further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4<sup>th</sup> 274.
- q. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.
- r. "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).
- s. "Residence" shall mean the habitable portion of a building designed for and occupied exclusively for living purposes, including one-family, two-family, mobile home within a mobile home park, and multifamily dwellings, but not including hotels, motels, trailers, tents, converted transit vehicles, boarding or lodging houses, or any type of temporary structures.
- t. "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 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.
- u. "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.
- v. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.
- w. "Youth-Oriented facility" means preschool, elementary school, middle school, high school, public park, large family day care or day care center as defined in Chapters 12.05 and 12.120 of the Yuba County Ordinance Code, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

**ARTICLE 2  
PUBLIC NUISANCES DECLARED**

**7.40.200 Conditions Creating Public Nuisance**

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

- a. Any person owning, leasing, occupying or having charge or possession of any parcel of land within the unincorporated area of the County to cause or allow such parcel of land to be used for the cultivation of marijuana in violation of the provisions contained herein or any provisions set forth in Division 10 of the California Health and Safety Code.
- b. The cultivation of marijuana on a parcel that does not have an occupied legally established residence in conformance with the Yuba County Ordinance Code.
- c. The cultivation of marijuana on a parcel by anyone other than a qualified patient or a primary caregiver.
- d. Marijuana plants in public view as defined in Section 7.40.140 of this Chapter.
- e. Marijuana plants accessible to a minor (under the age of 18).
- f. The cultivation of marijuana in a manner that exceeds the exceptions of Section 7.40.300 of this Chapter.
- g. The improper use, storage and/or disposal (per the manufacturer's instructions and/or any law that governs same) of chemicals, fertilizers, gas products (CO<sub>2</sub>, butane, etc.) or any other products or equipment associated with the cultivation of marijuana.
- h. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

**ARTICLE 3  
EXCEPTIONS, INDOOR, OUTDOOR, AND FENCING**

**7.40.300 Exceptions**

This ordinance shall not apply to cultivation where all of the following conditions are met:

- a. The cultivation occurs on a parcel with an occupied legally established residence, and
- b. The cultivation is conducted by one or more qualified patients or primary caregivers and at least one of the plants being cultivated is for the qualified patient or primary caregiver who occupies the dwelling as their physical and legal place of residence, and
- c. The defined areas of cultivation are in accordance with this section and sections 7.40.310, 7.40.320, and 7.40.330 of this Chapter, there is not more than one outdoor defined area of cultivation per parcel and not more than one indoor defined area of cultivation as allowed for in this Chapter, and
- d. The cultivation does not exceed the marijuana plant quantities listed below:
  1. For parcels less than one (1) acre in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 18 marijuana plants. Of that total, only 12 can be mature marijuana plants. A maximum of 6 of the 12 mature marijuana plants can be cultivated outdoors.

2. For parcels one (1) acre but less than five (5) acres in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 30 marijuana plants. Of that total, only 18 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors.
3. For parcels five (5) acres but less than twenty (20) acres in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 60 marijuana plants. Of that total, only 36 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors.
4. For parcels twenty (20) acres or more in size with one residence, there is a combined limit of indoor and outdoor cultivation of no more than 99 marijuana plants. Of that total, only 60 can be mature marijuana plants. Mature marijuana plants can all be cultivated outdoors or a combination of outdoors and indoors.
5. For parcels containing multiple residences, in addition to the parcel limitations identified in 7.40.300d1, 2, 3, and 4, an additional indoor defined area of cultivation within each of the secondary residences that does not exceed one hundred (100) square feet of area and do not contain more than 6 marijuana plants per residence.

#### **7.40.310 Indoor Cultivation**

- a. Indoor cultivation shall not occur outside a single defined area of cultivation within a structure, shall not be in public view, and shall not be accessible to minors. The structure shall be located on a parcel with a legally established residence, occupied by a qualified patient or primary caregiver as their physical and legal place of residence. Additionally, the structure shall not be in violation of the County's Building and Zoning Ordinances by conforming to one of the following:
  1. In an accessory structure that is greater than 120 square foot in size and has received an approved building permit from Yuba County.
  2. In an accessory structure that is 120 square foot or less in size, and all of the following requirements are met:
    - i. The structure is not located within the front yard setback, is setback from the property line a distance consistent with the zoning the parcel is located within, and in no case located within five (5) feet of a property line, and
    - ii. The structure is one story in height and consistent with the zoning height restriction, and
    - iii. The structure has a roof, floor, and walls constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials, and
    - iv. All necessary building permits are obtained, including those needed for any plumbing, mechanical or electrical equipment.
  3. Within a residence, and all of the following requirements are met:
    - i. A qualified patient or primary caregiver occupies the dwelling as their physical and legal place of residence, and
    - ii. The lighting used for cultivation does not exceed 1200 watts, and



- iii. No gas products (CO<sub>2</sub>, butane, etc.) are used, and
  - iv. The cultivation is not located within the kitchen, and
  - v. The residence maintains at least one operable bathroom, and
  - vi. The defined area of cultivation is not more than one hundred (100) square feet and contains no more than 6 marijuana plants.
- b. No portion of any structure shall be altered unless a building permit has first been obtained, and under no circumstance shall any alteration create a fire-life-safety hazard.

#### **7.40.320 Outdoor Cultivation**

- a. Outdoor cultivation of marijuana shall not occur outside a single defined area of cultivation, shall not be in public view, shall be surrounded by a fence as required by 7.40.330, and shall not be accessible to minors.
- b. All outdoor cultivation shall not be located on parcels in a manner that increases the potential to create a public nuisance, and shall reduce the potential by:
  - 1. First and foremost, locating the area of cultivation on the parcel as far away as possible from neighboring residences, and
  - 2. Locating the area of cultivation on the parcel as close as possible to the cultivator's residence for security purposes, but taking into consideration the need to keep the cultivation away from neighboring residences, and
  - 3. For parcels less than one (1) acre in size, locating the area of cultivation no greater than twenty (20) feet from the cultivator's residence.
- c. Outdoor cultivation of marijuana shall not be located within:
  - 1. Ten (10) feet of the property line and within three hundred (300) feet of a school, school bus stop, park, or youth-oriented facility on parcels less than one (1) acre in size.
  - 2. Fifty (50) feet of the property line and within six hundred (600) feet of a school, school bus stop, park, or youth-oriented facility on parcels one (1) acre but less than five (5) acres in size.
  - 3. One hundred (100) feet of the property line and within one thousand (1,000) feet of a school, school bus stop, park, or youth-oriented facility on parcels five (5) acres but less than twenty (20) acres in size.
  - 4. Two hundred (200) feet of the property line and within one thousand (1,000) feet of a school, school bus stop, park, or youth-oriented facility on parcels twenty (20) acres or more in size.
- d. The distances specified in this section shall be the horizontal distance measured in a straight line to the closest area in which the medical marijuana is cultivated.

#### **7.40.330 Fencing**

Outdoor cultivation shall be fully surrounded by a solid fence at least six (6) feet but not greater than (8) feet in height with a locking gate and conform to the following:

- a. Fencing materials shall be in compliance with Section 7.40.140i, and
- b. Location of fence shall meet zoning setback and height requirements, and
- c. Fences over six (6) feet in height will require proof of an approved building permit, and

- d. Marijuana plant(s) shall not be higher than the fence, and
- e. The fence and gate must be adequately secure to prevent unauthorized entry and keep the area out of reach of minors.
- f. Bushes or hedgerows alone shall not constitute an adequate fence under this Chapter. However, for parcels greater than 5 acres in size, a combination of mature vegetation or natural topography that keeps the cultivation out of public view in combination with a securable six foot tall chain link fence may be substituted for a solid fence.

## **ARTICLE 4 ENFORCEMENT**

### **7.40.400 Enforcement Authority**

The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

### **7.40.410 Right of Entry/Inspection**

To enforce the provision of this Code, an 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 Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

### **7.40.420 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 guidelines 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.

### **7.40.430 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 unincorporated area of Yuba County 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 unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

#### **7.40.440 Penalties and 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. 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. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
  1. A penalty of \$100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
  2. A penalty of \$200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
  3. A penalty of \$500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.
- c. For the purpose of calculating the Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation. In addition, each marijuana plant in excess of the exceptions contained in Section 7.40.300 shall be charged as a separate violation.
- d. The Administrative Penalty, pursuant to this Section, shall begin to accrue immediately upon issuance of a Notice and Order to Abate Public Nuisance and continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the accrual of the Administrative Penalty shall be stayed during the pendency of the hearing.
- e. Any person who has received a Notice and Order to Abate Public Nuisance may request an appeal within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.
- f. As authorized by Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, the court may order the owner to pay treble the costs of abatement.
- g. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.

#### **7.40.450 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, 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.

**7.40.460 Enforcement Costs**

All costs associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist.

**7.40.470 Severability**

If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.