

ARTICLE 5 MARIJUANA CULTIVATION

Sec. G-IV 5.1 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 Article.

Sec. G-IV 5.2 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. Proposition 215 was intended 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, codified as California Health and Safety Code Section 11362.7 et seq., and entitled “The Medical Marijuana Program (MMP) Act.” As subsequently amended, The MMP Act became effective to clarify the scope of the Compassionate Use Act 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 the County of Nevada to adopt and enforce ordinances that are consistent with SB 420.

E. On October 9, 2015, the State of California enacted AB 266 (codified in the Business & Professions Code, the Government Code, the Health and Safety Code, Labor Code, and the Revenue and Taxation Code) regulating commercial marijuana cultivation, SB 643 (codified in the Business & Professions Code) establishing standards for the issuance of prescriptions for medical marijuana as well as a comprehensive licensing scheme, and AB 243 (codified in the Business & Professions Code, the Fish and Game Code, the Health and Safety Code, and the Water Code) regulating medical marijuana cultivation. All three bills became effective on January 1, 2016. AB 243 includes a deadline of March 1, 2016 for local agencies, including cities, counties, and cities and counties, to establish local regulations pertaining to cultivation of marijuana and to establish local conditional permitting procedures. Failure to meet this deadline renders the State of California the sole licensing authority.

F. Each of the above-mentioned recently enacted State laws allows for local agencies, including cities, counties, and cities and counties, to regulate or ban cultivation of marijuana within their jurisdiction, recognizing the importance of retained local control over marijuana cultivation within their jurisdiction.

G. 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.

H. 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 with high economic value 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. As of 2012, per pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach \$2,000 to \$5,000. A single marijuana plant cultivated within the County can thus yield \$4,000 or more in saleable marijuana.

I. 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.

J. Nevada County and other public entities have reported adverse impacts from Marijuana Cultivation, including but not limited to increased risks of criminal activity, acts of violence in connection with attempts to protect or steal marijuana grows, degradation of the natural environment, unsanitary conditions, violations of building codes, malodorous and disagreeable odors, and negative effects on physical, mental and community health. The creation of persistent strong odors as Marijuana plants mature and flower is offensive to many people, results in complaints of respiratory problems, and creates an attractive nuisance, alerting persons to the location of valuable Marijuana plants and creating an increased risk of crime.

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

L. Comprehensive restriction of premises used for Marijuana Cultivation is proper and necessary to address the risks and adverse impacts as stated herein, that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. In *Browne v. County of Tehama*, 213 Cal. App. 4th (2013), the 3rd District Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants... anyone...an unfettered right to cultivate marijuana for medical purposes. Accordingly the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the

California Supreme Court concurred that “Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”

N. In 2011, Nevada County experienced a dramatic increase in citizen complaints regarding the odor, threats to public safety and other nuisances that Cultivation sites can and have created. In May of 2012, Nevada County enacted Article 5 of the General Code setting forth comprehensive civil regulations governing the cultivation of medical marijuana within the unincorporated areas of Nevada County to address the adverse effects to the health, safety, and well-being of the County and its residents could suffer as the result of unregulated Marijuana Cultivation. The regulations in Article 5 have proven to be inadequate to control the negative impacts of Marijuana Cultivation. Since the adoption of Article 5, there has been increased Marijuana Cultivation through the unincorporated areas of the County in violation of the provisions of that ordinance. In addition, the graduated areas for cultivation and setback requirements based on parcel size and the complex regulations required to define Cultivation areas have proven cumbersome and problematic to administer and enforce.

O. According to the Nevada County Sheriff, the amount of Marijuana cultivated in Nevada County increases significantly with each growing season and is increasingly occurring in residential areas, in close proximity to residences, and on vacant, unsupervised and unsecured properties. Despite existing local regulations regarding Marijuana Cultivation, Nevada County has continued to experience significant numbers of citizen complaints regarding odor, threats to public safety, significant increases in criminal activity, degradation of the natural environment, malodorous and disagreeable smells, and other hazards and other nuisances arising from Marijuana Cultivation. The revised provisions contained in this Article are intended to address these nuisances and concerns, and simplify the regulations to be more readily understood by those affected and improve the enforcement process and to more effectively control the adverse impacts associated with Marijuana Cultivation as stated herein, while accommodating the desires of Qualified Patients and their Primary Caregivers.

P. Cultivation sites have been the subject of serious criminal activity and associated violence including armed robberies, assault, battery, home invasion robberies, homicides and burglaries. An increasing number of sites are very visible to, and easily accessible by, the public, including children and youth. To protect the Marijuana, some of these Cultivation sites use aggressive and vicious dogs, booby-trap devices and persons with weapons that threaten severe bodily harm or death to those who attempt to access the site. Left unregulated, Cultivation sites also result in loitering, increased traffic, noise, environmental health issues, unreasonable odors and other public nuisances that are harmful to the public health, safety and welfare of the surrounding community and its residents. Current regulations have not sufficiently curtailed this activity, requiring additional regulations to protect the health and safety of the community and its residents.

Q. Cultivation of any amount of Marijuana at locations or premises within 600 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.

R. 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. In addition, the Indoor Cultivation of Marijuana without compliance with basic building code requirements creates increased risks of electrical fire, mold, mildew, plumbing issues and other damage to persons and property.

S. It is the purpose and intent of this Article to implement State law by regulating the Cultivation of Marijuana in a manner consistent with State law. It is also the intent of this Article to balance the needs of medical patients and their caregivers and to promote the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Nevada. This Article is intended to be consistent with Proposition 215 and Senate Bill 420 as well as the newly enacted State regulations embodied in AB 266, AB 243 and SB 643. The intent and purpose of this Article is to establish reasonable regulations regarding the manner in which Marijuana may be cultivated, including restrictions on the amount and location of marijuana that may be cultivated on any Premises, in order to protect the public health, safety, and welfare in Nevada County, and to address the adverse impacts previous local regulations have failed to curtail.

T. 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 Article, 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.

U. Nothing in this Article shall be construed to allow the use of Marijuana for non-medical purposes, or allow any activity relating to the Cultivation, distribution, processing, storage, transportation or consumption of Marijuana that is otherwise illegal under State or Federal law. No provision of this Article 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.

V. In Nevada County, the typical growing season for Marijuana is approximately April through September of each year. Surrounding counties have adopted restrictions and, in some cases, bans on the Cultivation of Marijuana in their jurisdictions. Nevada County continues to encounter increasing numbers of Marijuana Cultivation sites of increasing sizes, in locations which conflict with the provisions of this Ordinance and operate in manners which create public nuisance to the surrounding community and its residents. There is an immediate need to provide certainty and guidance to those who might choose to Cultivate Marijuana in Nevada County and to preserve the public peace, health and safety of Nevada County residents by regulating and addressing the public nuisances associated with Marijuana Cultivation. If further action is not taken, it is likely that Nevada County will continue to encounter increasing numbers of Marijuana Cultivation sites of increasing sizes, in locations which conflict with the provisions of this Ordinance and operate in manners which create public nuisance to the surrounding community and its residents. There is an immediate need to provide certainty and guidance to those who might choose to Cultivate Marijuana in Nevada County and to preserve the public peace, health and safety of Nevada County residents by regulating and addressing the public nuisances associated with Marijuana Cultivation. In addition, if Marijuana Cultivation is not immediately further regulated, large quantities of illegal Marijuana Cultivation sites will be introduced into the local market in the near term. Finally, if no action is taken

~~immediately, the State regulations will take effect, precluding the County's ability to retain and/or exercise local control over the Cultivation of Marijuana in our community.~~ (Ord. 2405, 1/12/16)

W. In January of 2016, the Board of Supervisors passed Ordinance No. 2405 amending this Article, including provisions which banned outdoor cultivation. Also in January of 2016, Resolution 16-038 was passed authorizing the placement of Measure W on the June 2016 ballot. Measure W put amendments made to Article V, Sections G-IV 5.4(C) and (E) to the vote of the people. In February of 2016, the Board of Supervisors passed Resolution 16-082 memorializing the intent of the Board to repeal the ban on outdoor cultivation and to consider and adopt other outdoor regulations if Measure W failed to pass at the next available meeting after the results of the June 7, 2016, election were certified. On June 7, 2016, Measure W failed to pass, and those results were certified on July 19, 2016. Consistent with the intent stated in Resolution 16-082, a Board of Supervisors subcommittee met with local marijuana cultivation advocates on three occasions to attempt to craft regulations to put into place while repealing the outdoor cultivation ban. Consensus was not reached. This action is necessary to uphold the commitment to repeal the outdoor cultivation ban and to adopt other regulations.

Sec. G-IV 5.3 Definitions

As used herein the following definitions shall apply:

- A. "Accessory Structure" means a separate and legally permitted building or structure located on the same Legal Parcel as a Primary Place of Residence.
- B. "Child Care Center" means any licensed child care center, daycare center, childcare home, or any preschool.
- C. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- D. "Cultivation" or "Cultivate" means the grading, planting, growing, harvesting, drying, curing, trimming, processing, testing or storage, or any combination of these activities, 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.
- E. "Commercial Cannabis Activity" shall have the same meaning as set forth in Business & Professions Code Section 19300.5(k) and shall include all commercial cannabis-related activities contemplated by or for which a license may be required as set forth in AB 266, AB 243, and SB 643 (codified in the California Business & Professions Code, Government Code, Health and Safety Code, Labor Code and Revenue and Taxation Code).
- F. "Enforcing Officer" means the Sheriff, or authorized deputies or designees, Community Development Director or his designees, Environmental Health Director or his designees, or any other official authorized to enforce local, state or federal laws, ~~who are authorized to enforce this Article.~~
- G. "Fence" is defined in Section L-II 4.2.6 of the Nevada County Land Use and Development Code and this Article, and is further defined as a wall or barrier connected by boards, masonry, rails, panels or any other materials approved by the Planning Director for the purpose of enclosing space or separating parcels of land. For purposes of this Article, the term "Fence" does not include tarpaulins, cloth material, scrap material, bushes or hedgerows.

H. “Hazardous Materials” means any substance that is “flammable, explosive, reactive, corrosive or toxic,” as further defined in California Health and Safety Code Sections 25501 and 25503.5, as may be amended.

I. “Hearing Officer” means a person designated by the Board of Supervisors to conduct administrative hearings as provided in Section G-IV 5.9 of this Article.

J. “Identification card” shall have the same definition as California Health and Safety Code Section 11362.5 et seq., as may be amended.

K. “Indoor” or “Indoors” means within a fully enclosed and secure structure that complies with the California Building Code (Title 24, California Code of Regulations) for that specific occupancy type, as adopted by the County of Nevada, except for structures that are exempt from the requirement to obtain a building permit under the Nevada County Land Use and Development Code. Any structure used for Cultivation of Marijuana shall have 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. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy these requirements.

L. “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).

M. “Marijuana” shall have the same meaning as that set forth in Health and Safety Code Section 11018, as may be amended. Marijuana, Medical Marijuana, and the Cultivation thereof, as defined in this Article shall not be considered an agricultural activity, operation or facility under Civil Code Section 3482.5 or an Agricultural Product as defined in Section L-II 3.3 of the Nevada County Land Use and Development Code, or an Agricultural Operation as defined in Sections L-II 3.3, L-II 6.1 and L-XIV 1.1 of the Nevada County Land Use and Development Code.

N. “Medical Marijuana” shall mean Marijuana recommended by a licensed physician, in accordance with California Health and Safety Code Sections 11362.5 through 11362.83, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.

O. “Medical Marijuana Collective” means Qualified Patients and/or designated Primary Caregivers of Qualified Patients, who associate, or form a cooperative in accordance with Section 12300 of the Corporations Code, within the unincorporated area of the County in order to collectively or cooperatively cultivate Marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775, as may be amended. The term collective shall include “cooperative” unless the context clearly indicates otherwise.

P. “Outdoor” or “Outdoors” means any location that is not “Indoors” within a fully enclosed and secure structure as defined herein.

Q. “Outdoor Living Area” means any patio, deck, barbecue, sitting area, dining area, pool, hot tub, enclosed yard or other outdoor space or amenity which is designed and/or used for outdoor living and entertainment.

R. “Parcel” means a “Legal Parcel” as defined herein.

S. “Premises” means a single, Legal Parcel of property. Where contiguous Legal Parcels are under common ownership or control, such contiguous Legal Parcels shall be counted as a single “Premises” for purposes of this Article.

T. “Primary Caregiver” shall have the definition set forth in Health and Safety Code Section 11362.7(d), as may be amended.

U. “Primary Place of Residence” shall mean the Residence at which an individual resides, uses or otherwise occupies on a full-time, regular basis.

V. “Qualified Patient” shall have the definition as set forth in Health and Safety Code Sections 11362.7(c) and (f), as may be amended.

W. “Residence” shall mean a fully enclosed permanent structure used, designed or intended for human occupancy that has been legally established, permitted, and certified as single-family or multi-family dwelling in accordance with the County Land Use and Development Code. Recreational Vehicles (RVs), trailers, motorhomes, tents or other vehicles or structures which are used, designed, or intended as temporary housing shall not constitute a Residence for purposes of this Article, whether or not such vehicle or structure is otherwise permitted or allowed under the Nevada County Land Use and Development Code.

X. “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.

Y. “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.

Z. “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.

AA. “Sheriff” or “Sheriff’s Office” means the Nevada County Sheriff’s Office or the authorized representatives thereof.

BB. “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. (Ord. 2405, 1/12/16)

Sec. G-IV 5.4 Nuisance Declared; Cultivation Restrictions

A. The Cultivation of Marijuana, either Indoors or Outdoors, on any Parcel or Premises in an area or in a quantity greater than as provided herein, or in any other way not in conformance with or in violation of the provisions of this Article, is hereby declared to be a public nuisance that may be abated by any means available by law. The provisions of Section L-II 5.19 (Nonconforming Uses and Structures) of the Nevada County Land Use and Development Code shall not apply to the Cultivation of Marijuana hereby declared to be a public nuisance. No person owning, leasing, occupying, or having charge or possession of any Parcel or Premises within the County shall cause, allow, suffer, or permit such Premises to be used for the Cultivation of Marijuana in violation of the California Health and Safety Code or this Article.

B. Marijuana Cultivation is prohibited on any Parcel or Premises within the unincorporated territory of Nevada County except as an accessory use to a legally established Residence on a Legal Parcel.

C. Medical Marijuana Cultivation may be undertaken only by and in conformance with the following:

1. A Qualified Patient who occupies a legal Residence on the Legal Parcel being used for Medical Marijuana Cultivation as his or her primary place of Residence.
2. A Primary Caregiver on behalf of his or her Qualified Patient(s) but only on a Legal Parcel with a legal Residence which is occupied by the Qualified Patient or the Primary Caregiver as his or her primary place of Residence.
3. On a Legal Parcel improved with a permanent, occupied, legally permitted residence.
4. Only for medical purposes in accordance with federal, state and local law.
3. ~~In conformance with all applicable State and local laws, including all regulations and restrictions as set forth in this Article.~~

D. Indoor Medical Marijuana Cultivation may occur only within a legal structure that meets the definition of Indoor and complies with all applicable provisions of the County's Land Use and Development Code. Cultivation shall not take place in a kitchen, bathroom, bedrooms, common areas or any other space in the structure which is used as, designed or intended for human occupancy. Structures that are exempt from the requirement to obtain a building permit under the Nevada County Land Use and Development Code shall not be used for the Cultivation of Marijuana.

E. The following limitations apply to Cultivation of Marijuana on each Premises located within the unincorporated area of Nevada County, regardless of the number of Qualified Patients or Primary Caregivers residing at the Premises or participating directly or indirectly in the Marijuana Cultivation activity. These limitations shall be imposed notwithstanding any assertion that the person(s) Cultivating Medical Marijuana are the Primary Caregiver(s) for Qualified Patients or that such person(s) are collectively or cooperatively Cultivating Marijuana.

1. In areas designated primarily for residential use, Marijuana Cultivation may occur on a Parcel or Premises which serves as a Legally Permitted Primary Residence only as follows:

- a. Cultivation of Marijuana, Indoors or Outdoors, is prohibited in all areas zoned as R-1, R-2 and R-3 on Legal Parcels or Premises of any size.
- b. In areas designated as Residential and Estate in the Nevada County General Plan and zoned R-A only as follows:
 - i. Indoor or Outdoor Cultivation of Marijuana on Legal Parcels equal to or less than (5) acres in size is prohibited.
 - ii. On Parcels greater than 5 acres up to 10 acres in size, a total maximum of 12 plants are permitted to be cultivated Indoors only. No Outdoor cultivation is permitted.
 - iii. On Parcels which are greater than 10 acres in size up to 20 acres in size, Cultivation of Marijuana is permitted up to a total maximum of 16 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A

maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 800 square feet in size.

iv. On Parcels which are greater than 20 acres in size, Cultivation of Marijuana is permitted up to a total maximum of twenty-five (25) plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 1000 square feet in size.

2. In areas designated primarily for agricultural uses (e.g., AG, AE, FR, TPZ and areas designated in the Nevada County General Plan as Rural and zoned R-A), Marijuana Cultivation may occur on a Parcel or Premises which serves as a Legally Permitted Primary Residence only as follows:

a. Indoor or Outdoor Cultivation of Marijuana on Legal Parcels less than or equal to two (2) acres in size is prohibited.

b. Cultivation of Marijuana on Legal Parcels which are greater than two (2) acres up to five (5) acres may not exceed a total maximum of 12 plants, mature or immature, to be Cultivated Indoors only. No Outdoor cultivation is permitted.

c. Cultivation of Marijuana on Legal Parcels which are greater than five (5) acres up to ten (10) acres, may not exceed a total maximum of 12 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 600 square feet in size.

d. Cultivation of Marijuana on Legal Parcels which are greater than ten (10) acres up to twenty (20) acres is permitted up to a total maximum of 16 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 800 square feet in size.

e. Cultivation of Marijuana on Legal Parcels which are greater than twenty (20) acres is permitted up to a total maximum of twenty-five (25) plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 1000 square feet in size.

1. Outdoor Marijuana Cultivation in any amount or quantity on property located within the unincorporated territory of Nevada County is hereby prohibited. Cultivation within any detached Accessory Structure that does not meet the definition of Indoor shall be considered Outdoor Cultivation, and is therefore prohibited within the unincorporated area of Nevada County.

2. Medical Marijuana may be Cultivated only on Legal Parcels located within any area zoned primarily for residential or rural uses (e.g., R-1, R-2, R-3, R-A, AG, AE, FR or TPZ). Medical Marijuana Cultivation shall be limited to twelve (12) Marijuana plants per Legal Parcel, whether mature, immature or seedlings, which are to be kept and cultivated only in one

~~contiguous Indoor Cultivation area. The Indoor Cultivation of Marijuana, in any amount or quantity, on property located in any other zoning district is hereby prohibited.~~

3. Commercial Cannabis Activity in any amount or quantity on property located within the unincorporated territory of Nevada County is hereby prohibited.

4. The Cultivation of Marijuana, in any amount or quantity, on property located in any other zoning district is hereby prohibited.

F. The following setbacks shall apply to all Indoor and Outdoor Cultivation areas and shall be measured in a straight line from the nearest border of the Outdoor staked grow area or Indoor Cultivation area to the property line of any adjacent~~point of the Cultivation area enclosure to either the nearest exterior wall of a residential structure on a Legal Parcel under separate ownership or the nearest boundary line of any Outdoor Living Area on a~~ Legal Parcel under separate ownership.

1. For all Parcels or Premises:

a. Parcels of greater than 2 acres up to 5 acres: 150 ft.

b. Parcels of greater than 5 acres up to 10 acres: 200 ft.

c. Parcels of greater than 10 acres: 300 ft.~~1. For all single- or multi-family home parcels, 100 feet from any Legal Residence or Outdoor Living Area located on an adjacent separate Legal Parcel.~~

2. In a mobile home park as defined in Health and Safety Code Section 18214.1, 100 feet from a mobile home that is under separate ownership.

G. Cultivation of Marijuana is prohibited on any Parcel or Premises located within the following areas:

1. Upon any Premises located within 600 feet of any School, School Bus Stop, School Evacuation Site, Church, Park, Child Care Center, or Youth-Oriented Facility. Such distance shall be measured in a straight line from the Fence or other enclosure required by this Article to the nearest 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. In any location where the Marijuana would be visible from the public right-of-way or publicly traveled private roads at any stage of growth.

3. Within any setback area required by Section G-IV 5.4(G).

H. All Marijuana Cultivation, whether Indoors or Outdoors, ~~areas~~ shall comply with the following requirements:

1. All Marijuana Cultivated shall be shielded from public view at all stages of growth. All Cultivation areas shall be adequately secure to prevent unauthorized entry, including a secure locking mechanism that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area.

2. There shall be no exterior evidence of Cultivation from a public right-of-way or publicly traveled private road.

3. Marijuana Cultivation shall not adversely affect the health, safety, or general welfare of persons at the Cultivation site or at any nearby residence by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of hazardous materials, processes, products or wastes, or by any other way. The Cultivation of Marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to reasonably objectionable odors.
4. All new structures used or intended for Indoor Cultivation shall submit complete construction plans for review to the Building Department, obtain building permits, and obtain required building inspections and a final certificate of occupancy prior to the start of any Indoor Cultivation activities.
5. All electrical, mechanical, and plumbing used for Indoor Cultivation of Marijuana shall be installed with valid electrical, mechanical, and plumbing permits issued and inspected by the Nevada County Building Department, which building permits shall only be issued to the legal owner of the Premises. The collective draw from all electrical appliances on the Premises shall not exceed the maximum rating of the approved electrical panel for the primary legal Residence on the Parcel. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel.
6. All structures used for Cultivation of Marijuana shall contain adequate ventilation, air filtration and odor control filters to prevent odor, mold and mildew in any area used for Cultivation or which is used as, designed or intended for human occupancy, or on adjacent Premises.
7. Indoor grow lights shall not exceed one thousand two hundred watts (1,200 W) and shall comply with the California Building, Electrical and Fire Codes as adopted by the County of Nevada. Gas products (including, without limitation, CO₂, butane, propane and natural gas), or generators shall not be used within any structure used for Indoor Cultivation. Grow light systems associated with Cultivation shall be shielded to confine light and glare to the interior of the structure and shall conform to all applicable building and electrical codes.
8. 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, and shall comply with the requirements of Section L-II 4.2.8.D. of the Nevada County Land Use and Development Code.
9. Noise levels generated by Cultivation shall not exceed the standards set forth in Table L-II 4.1.7 (Exterior Noise Limits) of the Nevada County Zoning Ordinance applicable to the Land Use Category and Zoning District for the Premises on which the Cultivation occurs.~~The Cultivation of Marijuana shall not exceed the noise level standards as set forth in the County General Plan.~~
10. Wherever Medical Marijuana is grown, a copy of a current and valid, State-issued Medical Marijuana identification card, physician recommendation or Affidavit as set forth in this Section must be displayed at or immediately adjacent to the Cultivation area, in such a manner as to allow law enforcement officers to easily see the recommendation or Affidavit. If a Qualified Patient has a verbal medical recommendation, then the Qualified Patient shall provide an Affidavit setting forth the name and contact information of the physician making the recommendation, the date of the recommendation and amount(s) of Marijuana

recommended by the physician. The Affidavit shall be signed under penalty of perjury under the laws of the State of California.

11. 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(s) of the Parcel prior to commencing Cultivation of Marijuana on such Parcel, and (b) shall obtain a signed and notarized letter from the legal owner(s) consenting to the Cultivation of Marijuana on the Parcel. The person(s) Cultivating Marijuana shall obtain this written letter of consent from the legal owner prior to Cultivating Marijuana on the Premises and at least annually thereafter. A copy of the most current letter of consent shall be displayed in the same immediate area as the recommendations set forth in Section G-IV 5.4(D)(11), in such a manner as to allow law enforcement officers to easily see the letter of consent without having to enter any building of any type. The person(s) Cultivating Marijuana shall maintain the original letter of consent on the Premises at which Marijuana is being Cultivated and shall provide the original letter to the Enforcing Officer for review and copying upon request. The Sheriff may prescribe forms for such letters.

12. The use of Hazardous Materials shall be prohibited in the Cultivation of Marijuana except for limited quantities of Hazardous Materials that are below State of California threshold levels of 55 gallons of liquid, 500 pounds of solid, or 200 cubic feet of compressed gas. Any Hazardous Materials stored shall maintain a minimum setback distance of 100 feet from any private drinking water well, spring, water canal, creek or other surface water body, and 200 feet from any public water supply well. The production of any Hazardous Waste as part of the Cultivation process shall be prohibited.

13. All Premises used for the Cultivation of Marijuana shall have a legal and permitted water source on the Parcel and shall not engage in unlawful or unpermitted drawing of surface water or permit illegal discharges of water from the Parcel.

14. Cultivation within any detached Accessory Structure that does not meet the definition and criteria of Indoor shall be considered Outdoor Cultivation.

I. Accessory Structures used for the Cultivation of Marijuana shall meet all of the following criteria:

1. The accessory structure, regardless of size, shall be legally constructed in accordance with all applicable development permits and entitlements including, but not limited to, grading, building, structural, electrical, mechanical and plumbing permits approved by applicable federal, state and local authorities prior to the commencement of any Cultivation activity. The conversion of any existing accessory structure, or portion thereof, for Cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable federal, state and local authorities prior to commencement of any Cultivation activity.
2. The accessory structure shall not be built or placed within any setback as required by the Nevada County Land Use and Development Code or approved development permit or entitlement.
3. The accessory structure shall be equipped with permanently installed and permitted electricity, and shall not be served by temporary extension cords. Electrical wiring conductors shall be sized based on the currently adopted California Electrical Code with anticipated loads identified.

4. The accessory structure shall be equipped with a permanently installed and permitted odor control filtration and ventilation system adequate to prevent any odor, humidity, or mold problem within the structure, on the Parcel, or on adjacent Parcels.

5. If the accessory structure is a greenhouse, the panels shall be of glass or polycarbonate and should be opaque for security and visual screening purposes. Where the greenhouse panels are not obscure, the greenhouse shall be screened from view by a solid Fence.

J. Where the provisions of this Article are more restrictive than the Nevada County Land Use and Development Code, the provisions of this Article shall govern.

K. Nothing herein shall limit the ability of the Chief Building Official or designee, Fire Marshall or designee, or any other state or local employees or agents from entering the property to conduct the inspections authorized by or necessary to ensure compliance with this Article, 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. (Ord. 2405, 1/12/16)

L. In addition to all other requirements set forth in this Section G-IV 5.4, all Outdoor Cultivation areas shall comply with the following requirements:

1. All Marijuana Cultivated Outdoors must be fully enclosed within a sight obscuring Fence of at least 6 feet but not more than 8 feet in height that fully encloses the garden area. The Marijuana shall be shielded from public view at all stages of growth. Should the Marijuana plant(s) grow higher than the Fence, the Marijuana Plants shall be cut so they do not extend higher than such Fence. All Fences shall comply with Section L-II 4.2.6 of the Nevada County Land Use and Development Code and shall be sufficient to conceal the Marijuana from public view. The Fence must be adequately secure to prevent unauthorized entry and include a locking gate that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation 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 subsection. All Indoor Cultivation areas shall be adequately secure to prevent unauthorized entry, including a secure locking mechanism that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area.

2. Outdoor Cultivation shall be conducted in one contiguous area which is clearly staked or marked as an Outdoor Cultivation area for purposes of determining compliance with the requirements set forth in this Section G-IV 5.4.

Sec. G-IV 5.5 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 600 feet of a Premises upon which Marijuana is known to be 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 Premises upon which Marijuana is known to be cultivated within 600 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 Premises upon which Marijuana is known to be cultivated that such a use is being proposed within 600 feet of the Premises. (Ord. 2405, 1/12/16)

Sec. G-IV 5.6 Notice to Abate Unlawful Marijuana Cultivation

Whenever the Enforcing Officer determines that a public nuisance as described in this Article 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 Premises, through issuance of a "Notice to Abate Unlawful Marijuana Cultivation;" provided, however, that nothing in this Article shall affect or preclude the Sheriff, or other Enforcing Officer, from taking immediate abatement action without notice of any Marijuana which is Cultivated, possessed, or distributed in violation of state law - or when Marijuana Cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections G-IV 5.6 through G-IV 5.12 would not result in abatement of that nuisance within a short enough time period to avoid that threat.

Sec. G-IV 5.7 Contents of Notice

The Notice set forth in Section G-IV 5.6 shall be in writing and shall:

- A. Identify the owner(s) of the Parcel 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 Parcel 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 Parcel by reference to the Assessor's Parcel Number.
- D. Contain a statement that unlawful Marijuana Cultivation exists on the Parcel and that it has been determined by the Enforcing Officer to be a public nuisance as described in this Article.
- E. Describe the unlawful Marijuana Cultivation that exists and the actions required to abate it.
- F. Contain a statement that the legal owner and/or occupant is are required to abate the unlawful Marijuana Cultivation within five (5) calendar-business days after the date that said Notice was served.
- G. Contain a statement that the legal owner or occupant may, within five (5) calendar-business 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 Notice and the provisions of this Article.
- H. Contain a statement that, unless the legal owner or occupant abates the unlawful Marijuana Cultivation, or requests a hearing before the Board of Supervisors or its designee, within the time prescribed in the Notice, the Enforcing Officer will abate the nuisance at the legal owner and/or occupant's expense. 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.

Sec. G-IV 5.8 Service of Notice to Abate

The Notice set forth in Sections G-IV 5.6 and G-IV 5.7 shall be served in the following manner:

A. By delivering it personally to the legal owner of the Parcel and to the occupant, or by mailing it by regular United States mail, together with a certificate of mailing, to the occupant of the Parcel at the address thereof, and to any non-occupying legal owner at his or her address as it appears on the last equalized assessment roll, except that:

1. 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
2. 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 Parcel upon which the nuisance exists as follows: Copies of the Notice shall be posted along the frontage of the subject Parcel, and at such other locations on the Parcel reasonably likely to provide notice to the owner and any person known by the Enforcing Officer to be in possession of the Parcel. In no event shall fewer than two (2) copies of the Notice be posted on a Parcel pursuant to this section.

B. The date of service is deemed to be the date of personal delivery, ~~or~~ posting, or ~~three (3) days after~~ upon deposit in the U.S. Mail.

Sec. G-IV 5.9 Administrative Review

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

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 to Abate constitute a public nuisance to the Hearing Officer(s); or may show cause before the Hearing Officer(s) why those conditions should not be abated in accordance with the provisions of this Article. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within five (5) ~~calendar business~~ days after the date that said Notice to Abate 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 appeal by way of written request for a hearing that complies fully with the requirements of this Section, the findings of the Enforcing Officer contained in the Notice to Abate shall become final and conclusive on the sixth business day following service of the Notice to Abate. The request for a hearing and appeal shall not be deemed complete and shall not be considered unless it specifies why the marijuana cultivation that is subject to abatement in the Notice to Abate Unlawful Marijuana Cultivation is not in violation of this Article.

C. Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the Clerk of the Board of Supervisors shall set a hearing date not less than five (5) calendar days or more than ~~thirty (30)~~ twenty (20) calendar days from the date the request was filed. The Clerk of the Board of Supervisors shall send written notice of the hearing date to the requesting party, to any other parties upon whom the Notice to Abate was served, and to the Enforcing Officer.

Continuances of the hearing will only be granted on a showing of good cause. Unavailability of an attorney does not constitute "good cause."

D. Any hearing conducted pursuant to this Article 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(s) may continue the administrative hearing from time to time based on showing of good cause as stated above. Unavailability of an attorney does not constitute "good cause".

F. The Hearing Officer(s) 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(s) 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 at the time the violation was served, findings concerning the propriety and means of abatement of the conditions set forth in the Notice, and whether or not any abatement efforts were made at all after notice of the violation was served. The Hearing Officer(s) 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. The decision shall be personally served immediately following the hearing, upon the party requesting the hearing, any other parties upon whom the Notice was served, and the Enforcing Officer if the decision is made at the time of the hearing. In the event the Hearing Officer(s) takes the matter under submission, the written findings will be mailed to the parties, 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.~~

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

Sec. G-IV 5.10 Liability for Costs

A. In any enforcement action brought pursuant to this Article, 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, attorneys' fees and administrative penalties, including 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 Article, whether those costs are incurred prior to, during, or following enactment of this Article;

B. In any action by the Enforcing Officer to abate unlawful marijuana cultivation under this Article, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorneys' 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 attorneys'

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.

C. Administrative Civil Penalties:

1. In addition to any other remedy prescribed in this chapter, any nuisance as described in this chapter may be subject to an administrative penalty. The administrative penalty may be imposed via the administrative process set forth in this Section, as provided by Government Code section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.

2. Acts, omissions, or conditions in violation of this chapter that continue to exist, or occur on more than one day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the date of service of the Notice of Violation and the effective date are separate violations.

3. In addition to the afore-stated attorneys' fees and costs associated with abatement proceedings, any owner and/or occupant of a property on which Marijuana is being cultivated in violation of this Article or any other regulation related to Marijuana Cultivation will be subject to the imposition of administrative civil penalties as follows:
 - a. First citation in a 12-month period: \$100 per day/per violation that nuisance remains unabated;

 - b. Second citation in a 12-month period: \$200 per day/per violation that nuisance remains unabated;

 - c. Any violation thereafter in a 12-month period: \$500 per day/per violation that nuisance remains unabated;

 - d. Each Marijuana Plant cultivated in violation of this Article shall constitute a separate violation and is subject to the imposition of a per plant/per day penalty as set forth G-IV 5.10(C)(3)(a-c), and as determined by the Enforcing Officer and/or Hearing Officer(s);

 - e. Each day or part of any day a nuisance exists or continues to exist constitutes a separate violation;

 - f. Nothing in this Article precludes an Enforcing Officer(s) from conducting inspections day to day as permitted by law to determine if a violation has been abated or

otherwise corrected;

g. These administrative penalties will begin to accrue on the date the Notice of Violation and Proposed Administrative Penalty is served and will continue to accrue until the nuisance is abated to the satisfaction of the Enforcing Officer or as otherwise directed by a Hearing Officer presiding over any hearing regarding abatement of the nuisance;

h. These amounts are separate and apart from any administrative civil penalties that may be imposed as permitted under the law for building or safety code violations;

i. In determining the amount of the administrative penalty to be imposed, the Enforcing Officer, Hearing Officer(s), or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation and any other matters justice may require.

4. Separate, apart from and in addition to the administrative civil penalties described in G-IV 5.10(C) above, the following administrative civil penalties may be assessed for violations of any building and safety codes applicable to the Cultivation of Marijuana as follows:

a. First citation in a 12-month period: \$100 per day/per violation that nuisance remains unabated;

b. Second citation in a 12-month period: \$500 per day/per violation that nuisance remains unabated;

c. Any violation thereafter in a 12-month period: \$1000 per day/per violation that nuisance remains unabated;

d. Each violation of building and safety codes constitutes a separate violation. Each day or part of any day a nuisance exists constitutes a separate violation;

e. Nothing in this Article precludes an Enforcing Officer(s) from conducting inspections day to day as permitted by law to determine if a violation has been abated or otherwise corrected;

f. If the violation of the building and safety code is a continuing violation, the Enforcing Officer shall provide a reasonable time, not to exceed five (5) calendar days, for correction of the condition prior to the imposition of penalties. This provision

allowing for time to correct the continuing violation does not apply to the administrative civil penalties imposed as a result of any violation other than a violation of the building and safety code as set forth in this subsection;

g. In determining the amount of the administrative penalty, the Enforcing Officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation and any other matters justice may require.

5. The Enforcing Officer may commence the administrative process by issuance of a Notice of Violation and Proposed Administrative Penalty, which shall state the amount of the proposed administrative penalty, and the reasons therefor. The Notice of Violation and Proposed Administrative Penalty may be combined with a Notice to Abate Unlawful Marijuana Cultivation issued pursuant to Section G IV 5.6 and related provisions.

6. The Notice of Violation and Proposed Administrative Penalty shall be served by certified mail addressed to all of the following: (i) the owner of the property on which the violation exists, at the address shown on the last equalized assessment roll or as otherwise known to the Enforcing Officer; and (ii) anyone known to the enforcing officer to be in possession of, or occupying, the property subject to the Notice of Violation and Proposed Administrative Penalty, at the street address of the property. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed upon any other person.

7. The Notice of Violation and Proposed Administrative Penalty shall inform the recipient of their right to request a hearing before the Board of Supervisors. If such a hearing is not requested within ten (10) calendar days after issuance of the Notice of Violation and Proposed Administrative Penalty, the proposed penalty shall become final and conclusive, and the person to whom the Notice was issued shall immediately make payment of the penalty amount to the county. If any person to whom the Notice of Proposed Penalty is issued requests a hearing before the Board of Supervisors, or the Hearing Officer(s) to whom the board has delegated authority, in accordance with this section, the person shall be notified by first class mail, postage prepaid, when the matter has been set for hearing. Failure of the person or persons to whom the notice was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.

8. After the hearing, the Board or Hearing Officer(s) may impose, modify, or disapprove, in whole or in part, by written order, the proposed penalty set forth in the notice. The decision of the Board of Supervisors or Hearing Officer(s) shall be final and conclusive. Any order of the Board of Supervisors or Hearing Officer(s) shall become effective upon issuance thereof and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in said order shall be made to the County within twenty (20)

calendar days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code Section 53069.4(b).

9. Interest shall accrue on all amounts under this section from the effective date of the administrative penalty order, as set forth in this section, to the date fully paid pursuant to the laws applicable to civil money judgments.

10. Administrative civil penalties are assessed on the first day of the Notice of Violation and continue to accrue until the condition is abated. Abatement of unlawful Marijuana Cultivation prior to any hearing or appeal of a Notice to Abate Unlawful Marijuana Cultivation does not absolve the owner and/or occupant of the Premises of the obligation to pay the Administrative Civil Penalties.

11. The Board of Supervisors maintains the right to delegate authority to conduct hearings and render decisions to a Hearing Officer(s).

12. This subsection is effective and will be enforced beginning on January 1, 2017.

D. Lien:

In addition to any other legal remedy, whenever the amount of any administrative civil penalty imposed pursuant to this Article has not been satisfied in full within ninety (90) days and has not been timely appealed to the Superior Court in accordance with Government Code section 536069.4 (b), or if appealed, such appeal has been dismissed or denied, this obligation may be enforced as a lien against the real property on which the violation occurred.

1. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of California Code of Civil Procedure section 697.340, and may be executed as provided in the California Code of Civil Procedure sections 683.110 to 683.220, inclusive.

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

3. Prior to recording any such lien, the Enforcing Officer shall prepare and file with the Clerk of the Board of Supervisors a report stating the amounts due and owing.

4. The Clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it.

5. The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten (10) calendar days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail is effective on the date of mailing and failure of the owner to actually receive notice does not affect its validity.

6. Any person whose real property is subject to a lien pursuant to this Section may file a written protest with the Clerk of the Board of Supervisors and/or may protest orally at the Board of Supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

7. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.

8. Within thirty (30) days following the Board of Supervisors' adoption of a resolution imposing a lien, the Clerk of the Board of Supervisors will file same as a judgment lien in the Nevada County Recorder's Office.

9. Once the County receives full payment for outstanding principal, penalties, interest and costs, the Clerk of the Board of Supervisors will either record a Notice of Satisfaction or provide the owner with a Notice of Satisfaction for recordation at the Nevada County Recorder's Office. This Notice of Satisfaction will cancel the County's lien under this Section.

10. The lien may be foreclosed and the real party sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. There shall be no right to trial by jury. The County shall be entitled to its attorneys' fees and costs.

E. Administrative penalties imposed pursuant to his Section shall also constitute a personal obligation on each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event the administrative penalties are imposed pursuant to this Section on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the County may prosecute a civil action through the Office of the County Counsel to collect any administrative penalty imposed pursuant to this Section.

F. The Board of Supervisors delegates the responsibility to conduct a hearing in conformance with this Article to a Hearing Officer(s).

Sec. G-IV 5.11 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. Abatement prior to the hearing will not absolve an owner or occupant from paying costs, fees and administrative penalties which accrued up to the date of abatement. Proof of Abatement should be provided to the Hearing Officer(s) at the time of hearing.

Sec. G-IV 5.12 Enforcement

A. Whenever the Enforcing Officer becomes aware that an owner or occupant has failed to abate any unlawful Marijuana Cultivation within five (5) business days of the date of service of the Notice to Abate Unlawful Marijuana Cultivation, unless timely appealed, or as of the date of the decision of the Hearing Officer(s) 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; and/or
3. Issue administrative citations in accordance with Section L-II 5.23, et seq., of the Nevada County Land Use and Development Code; and/or
4. Take any other legal action as may be authorized under State or local law to abate and/or enforce the provisions of this Article.

Sec. G-IV 5.13 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(s) showing the cost of abatement, the administrative penalties, and the administrative costs and fees for each parcel.

Sec. G-IV 5.14 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(s) 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, the administrative penalties and the cost of administration to the Enforcing Officer prior to the time set for the hearing by the Hearing Officer(s). Unless otherwise expressly stated by the owner,

payment of the cost of abatement, the administrative penalties 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.

Sec. G-IV 5.15 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(s) shall also determine whether or not the property 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 property 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.

D. Failure to attend a properly noticed hearing shall constitute a waiver and the Hearing Officer shall issue an order for costs, administrative penalties and fees as requested by the Enforcing Officer at the hearing.

Sec. G-IV 5.16 Modifications

The Hearing Officer(s) shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report ~~by resolution~~.

Sec. G-IV 5.17 Special Assessments and Lien

The Board of Supervisors may order that the cost of abating nuisances pursuant to this Article, the administrative penalties, 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, the administrative penalties, 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 liens to be recorded against the respective parcels of real property pursuant to Section 25845 of the Government Code.

Sec. G-IV 5.18 Summary Abatement

Notwithstanding any other provision of this Article, when any unlawful Marijuana Cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections G-IV 5.6 through G-IV 5.12 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 as permitted by law. The Enforcing Officer shall make reasonable efforts to notify the persons identified in Section G-IV 5.7 but the formal notice and hearing procedures set forth in this Article shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections G-IV 5.13 through G-IV 5.17.

Sec. G-IV 5.19 No Duty to Enforce

Nothing in this Article 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.