



ORDINANCE No. 2405

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN URGENCY ORDINANCE AMENDING THE TITLE AND SECTIONS G-IV 5.2 THROUGH G-IV 5.5 OF ARTICLE 5 OF CHAPTER IV OF THE NEVADA COUNTY GENERAL CODE REGARDING RESTRICTIONS ON MARIJUANA CULTIVATION (4/5ths AFFIRMATIVE VOTE REQUIRED)

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

SECTION I:

The title to Article 5 of Chapter IV of the Nevada County General Code is hereby amended to read as follows:

“ARTICLE 5 MARIJUANA CULTIVATION”

SECTION II:

Sections G-IV 5.2 through G-IV 5.5 of Article 5 of Chapter IV of the Nevada County General Code are hereby amended to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

SECTION III:

The County finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15301 (permitting, leasing and minor alterations to existing facilities), 15303 (construction and location of new, small structures), 15304 (minor alterations to land), 15307 (actions taken as authorized by local ordinance to assure protection of natural resources), 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION IV:

If any provision of the amended Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provision to

other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION V:

Pursuant to Government Code section 25123(d), this Ordinance shall take effect and be in force immediately upon the passage hereof, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in the Union and Sierra Sun, newspapers of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 12th day of January, 2016, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller and Hank Weston.

Noes: Richard Anderson.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Dan Miller, Chair

1/12/2016 cc: CC*
Union*
Sierra Sun*
GIS*
QC*
COB*
Elections*
AC*
Sheriff*

EXHIBIT A

“ARTICLE 5 MARIJUANA CULTIVATION

* * * *

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, 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. 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.

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 and (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 his authorized deputies or designees, 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.

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
 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. 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. 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.
- F. The following setbacks shall apply to all Indoor Cultivation areas and shall be measured in a straight line from the nearest 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 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 Cultivation 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 (1200W) 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. 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(I)(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.
- 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.

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."