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Adopted Nevada County urgency ordinance regarding marijuana cultivation

ORDINANCE No.

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN URGENCY ORDINANCE ADDING ARTICLE 5 TO CHAPTER IV OF THE NEVADA COUNTY GENERAL CODE

REGARDING MEDICAL MARIJUANA CULTIVATION

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

SECTION I: Article 5 of Chapter IV of the Nevada County General Code is hereby added to read

as shown in Exhibit A attached hereto and incorporated herein by this reference.

SECTION II: The County finds that this Article is not subject to the California Environmental

Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct

or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there

is no possibility the activity in question may have a significant effect on the environment).

In addition to the foregoing general exemptions, the following categorical exemptions apply:

Sections 15308 (actions taken as authorized by local ordinance to assure protection of the

environment) and 15321 (action by agency for enforcement of law, general rule, standard or

objective administered or adopted by the agency, including by direct referral to the County

Counsel as appropriate for judicial enforcement).

SECTION III: Severability. If any provision of this 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 IV: 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 _____, a newspaper 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 day of _____, _____, by the following vote of said Board:

EXHIBIT A:
MEDICAL MARIJUANA CULTIVATION

Section 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.

Section 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."

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(C) In 2004, the Legislature enacted SB 420 (codified as California Health and Safety Code

Section 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide

patients and primary caregivers who collectively or cooperatively cultivate marijuana

for medical purposes with a limited defense to certain specified State criminal statutes.

(D) California Health & Safety Code section 11362.83 expressly allows cities and counties to

adopt and enforce ordinances that are consistent with Senate Bill 420.

(E) The Federal Controlled Substances Act, 21 U.S.C. sections 801, et seq., classifies

marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high

potential for abuse, that has no currently accepted medical use in treatment in the United

States, and that has not been accepted as safe for use under medical supervision. The Federal

Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate,

manufacture, distribute or dispense, or possess with intent to manufacture, distribute

or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The

Federal Controlled Substances Act contains no exemption for the cultivation, manufacture,

distribution, dispensation, or possession of marijuana for medical purposes.

(F) The County's unique geographic and climatic conditions, which include dense forested

areas receiving substantial precipitation, along with the sparse population in many areas of

the County, provide conditions that are favorable to marijuana cultivation. Marijuana growers

can achieve a high per-plant yield because of the County's favorable growing conditions. The

Federal Drug Enforcement Administration reports that various types of marijuana plants

under various planting conditions may yield averages of 236 grams (about one-half pound) to

846 grams (nearly two pounds). Based on law enforcement seizures, yields in Nevada County

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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 \$5000. A single

marijuana plant cultivated within the County can thus yield \$4,000 or more in saleable

marijuana.

(G) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing equalizing patients and primary caregivers with limited immunity from state criminal

prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420,

nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of

Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive

civil regulation of premises used for marijuana cultivation. The unregulated cultivation of

marijuana in the unincorporated area of Nevada County can adversely affect the health,

safety, and well-being of the County and its residents. Comprehensive civil regulation

of premises used for marijuana cultivation is proper and necessary to avoid the risks of

criminal activity, degradation of the natural environment, malodorous smells, and indoor

electrical fire hazards that may result from unregulated marijuana cultivation. These risks

are especially significant if the amount of marijuana cultivated on a single premises is

not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in

one place.

(H) Cultivation of any amount of marijuana at locations or premises within 1000 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

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juveniles, and therefore be especially vulnerable to theft or recreational consumption by

juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or

endangered. Therefore, cultivation of any amount of marijuana in such locations or premises

is especially hazardous to public safety and welfare, and to the protection of children and

the person(s) cultivating the marijuana.

(I) As recognized by the Attorney General's August 2, 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. (J) It is the purpose and intent of

this Article to implement State law by regulating the cultivation of medical 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 which promotes 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

and towards that end, it is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by State law. Rather,

the intent and purpose of this Article is to establish reasonable regulations regarding the

manner in which marijuana may be cultivated, including restrictions on the amount of

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marijuana that may be individually, collectively, or cooperatively cultivated in any location

or premises, in order to protect the public health, safety, and welfare in Nevada County.

(K) The limited right of qualified patients and their primary caregivers under State law to

cultivate marijuana plants for medical purposes does not confer the right to create or

maintain a public nuisance. By adopting the regulations contained in this 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.

(L) 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 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.

(M) 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. In 2011, Nevada County has experienced a dramatic increase in citizen

complaints regarding the odor, threats to public safety and other nuisances that unregulated

Cultivation sites can create.

(N) Cultivation sites have been the subject of serious criminal activity and associated violence including armed robberies, assault, battery, home invasion robberies 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. (0)

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 left unregulated for

another growing season, it is likely that Nevada County will encounter increasing numbers of

Marijuana Cultivation sites of increasing sizes, in locations which conflict with the

provisions of this ordinance and operated in manners which creates public nuisance to

the surrounding community and its residents. Due to the start of the current Marijuana grow

season there is an immediate need to provide certainty and guidance to those who might choose

to Cultivate Marijuana in Nevada County and preserve the public peace, health and safety of

Nevada County residents by regulating and addressing the public nuisances associated with

Medical Marijuana Cultivation. In addition, if Medical Marijuana cultivation is

not immediately regulated, large quantities of illegal Marijuana cultivation sites will

be introduced into the local market in the near term.

Section G-IV 5.3 Definitions. As used herein the following definitions shall apply:

(A) "Child Care Center" means any licensed child care center, daycare center, or childcare

home, or any preschool.

(B) "Church" means a structure or leased portion of a structure, which is used primarily for

religious worship and related religious activities.

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(C) "Cultivation" or "Cultivate" means the planting, growing, harvesting, drying, processing

or storage of one or more Marijuana plants or any part thereof in any location, indoor or

outdoor, including from within a fully enclosed and secure building.

(D) "Enforcing Officer" means the Sheriff, or his authorized deputies or designees, who is

authorized to enforce this Article.

(E) "Fence" is defined in Section L-II 4.2.6 of the Nevada County Land Use and Development

Code and Section G-IV 5.4

(I)(1) of 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 walls, tarpaulins, scrap material, bushes or

hedgerows.

(F) "Hazardous Materials" means any substance that is "flammable, reactive, corrosive or

toxic", as further defined in California Health and Safety Code Sections 25501 and 25503.5,

as may be amended.

(G) "Hearing Officer" means a person designated by the Board of Supervisors to conduct

administrative lien hearings as provided in Section G-IV 5.9 of this Article.

(H) "Identification card" shall have the same definition as California Health and Safety Code

Section 11362.5 et seq., as may be amended.

(I) "Indoor" or "Indoors" means within a fully enclosed and secure structure that complies

with the California Building Code (CBC), as adopted by the County of Nevada, that has a

complete roof enclosure supported by connecting walls extending from the ground to the

roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The

structure must be secure against unauthorized entry, accessible only through one or more

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lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials requirement.

(J) "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).

(K) "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.

(L) "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.

(M) "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.

(N) "Outdoor" or "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

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(O) "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.

(P) "Parcel" means a "Legal Parcel" as defined herein.

(Q) "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.

(R) "Primary Caregiver" shall have the definition as Health and Safety Code Section 11362.7(d), as may be amended.

(S) "Qualified Patient" shall have the definition as Health and Safety Code Sections 11362.7(c) and (f), as may be amended.

(T) "Residence" shall mean a fully enclosed structure used for human occupancy and shall have

the same meaning as "domicile."

(U) "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.

(V) "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.

(W) "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.

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(X) "Sheriff" or "Sheriff's Office" means the Nevada County Sheriff's Office or the authorized representatives thereof.

(Y) "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.

Section 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 in accordance with this Article, and by any other 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.

(B) Medical 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) Except as provided in Section 5.4(D) of this Article, Medical Marijuana Cultivation may

be undertaken only by a Qualified Patient who occupies a Legal Residence on a Legal Parcel or

Premises proposed for Cultivation as his or her primary place of residence.

(D) A Primary Caregiver may cultivate Medical Marijuana on behalf of his or her qualified

Patient(s), but only at the Qualified Patient's primary Residence and/or at the Primary

Caregiver's primary Residence, and only in conformance with all applicable State and local

regulations and all limitations set forth in this Article.

(E) Indoor Cultivation may occur only within a legal structure that meets the definition of

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Indoor and complies with all applicable provisions of the County's Land Use and Development

Code. Any accessory structure used for Cultivation of Marijuana shall be ventilated with odor

control filters, and shall not create an odor, humidity or mold problem on the Premises or

on adjacent Premises.

(F) All electrical and plumbing used for Indoor Cultivation of Marijuana shall be installed

with valid electrical 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.

(G) The following limitations apply to Cultivation of Medical 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 Medical Marijuana Cultivation activity. These limitations shall be

imposed notwithstanding any assertion that the person(s) Cultivating the Marijuana are the

Primary Caregiver(s) for Qualified Patients or that such person(s) are collectively or

cooperatively Cultivating Marijuana.

(1) Premises located within any area zoned primarily for residential uses (e.g., R-1, R-2,

R-3 or R-A) shall be limited to the following:

a. Premises with a gross area of less than two acres shall be limited to 100 contiguous

square feet of Indoor Cultivation area.

b. Premises with a gross area of two acres or more shall be limited to: a. 75 contiguous

square feet of Outdoor Cultivation area; or

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b. Outdoor Cultivation of up to six (6) mature or immature Marijuana plants if grown in grow

bags or pots which are 25-gallons or smaller, and all such plants are grown in a single, clearly designated contiguous grow area; or

c. 100 contiguous square feet of Indoor Cultivation area.

(2) Premises located within any area zoned primarily for rural uses (e.g., AG, AE, FR, or

TPZ) shall be limited to the following:

a. Premises with a gross area of less than two acres shall be limited to 100 contiguous

square feet of Indoor Cultivation area or 150 contiguous square feet of Outdoor Cultivation

area.

b. Premises with a gross area of two acres but less than five acres shall be limited to 300

contiguous square feet of Outdoor Cultivation area or 100 contiguous square feet of Indoor

Cultivation area.

c. Premises with a gross area of five acres but less than ten acres shall be limited to 400

contiguous square feet of Outdoor Cultivation area or 100 contiguous square feet of Indoor

Cultivation area.

d. Premises with a gross area of ten acres but less than twenty acres shall be limited to

600 contiguous square feet of Outdoor Cultivation area or 100 contiguous square feet of

Indoor Cultivation area.

e. Premises with a gross area of 20 acres or more shall be limited to 1000 contiguous square

feet of Outdoor Cultivation area or 100 contiguous square feet of Indoor Cultivation area.

(3) The Indoor or Outdoor Cultivation of Marijuana, in any amount or quantity, on property

located in any other zoning district is hereby declared to be unlawful and a public nuisance

that may be abated in accordance with this Article.

(H) The following setbacks shall apply to all Indoor and Outdoor Cultivation areas and shall

be measured in a straight line from the nearest point of the fence or other enclosure

required by Section G-IV 5.4

(1) (1) 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) On parcels located within any area zoned primarily for residential uses (e.g., R-1, R-2,

R-3 or R-A):

a. If the parcel is less than two gross acres, one hundred (100) feet from any legal residence or outdoor living area located on an adjacent separate legal parcel.

b. If the parcel is 2 gross acres or greater, two hundred (200) feet from any legal residence

or outdoor living area located on an adjacent separate legal parcel.

(2) On parcels located within any area zoned primarily for rural uses (e.g., AG, AE, FR,

TPZ):

a. If the parcel is less than two gross acres, one hundred (100) feet from any legal residence or outdoor living area located on an adjacent separate legal parcel.

b. If the parcel is at least 2 gross acres but less than 10 acres, one hundred fifty (150)

feet from any legal residence or outdoor living area located on an adjacent separate legal

parcel.

c. If the parcel is at least 5 gross acres but less than 10 acres, two hundred (200) feet

from any legal residence or outdoor living area located on an adjacent separate legal

parcel. d. If the parcel is at least 10 gross acres but less than 20 acres, two hundred-fifty

(250) feet from any legal residence or outdoor living area located on an adjacent separate

legal parcel. e. If the parcel is 20 gross acres or greater, three hundred (300) feet from any

legal residence or outdoor living area located on an adjacent separate legal parcel.

(3) In a mobile home park as defined in Health and Safety Code Section 18214.1, one hundred

(100) feet from a mobile home that is under separate ownership. (I) Cultivation of Marijuana

is prohibited on any Parcel or Premises located within the following areas:

(1) Upon any Premises located within one thousand (1000) 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

Section G-IV(I)(1) 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(H).

(J) All Cultivation areas shall comply with the following requirements:

(1) All Marijuana Cultivated Outdoors must be fully enclosed within an translucent (but not

transparent), sight obscuring Fence of at least six (6) but not more than eight (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

plants shall be cut so as to not extend higher than such Fence. All Fences shall comply with

Section L-114.2.6 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) There shall be no exterior evidence of indoor or outdoor cultivation from a public right

-of-way or publicly traveled private road.

(3) Outdoor cultivation areas shall be on a single plane and shall be clearly staked or

marked as an outdoor cultivation area for purposes of determining compliance with the

requirements set forth in Section G-IV 5.4

(G). No portion of any marijuana plant, including any portion of the plant's canopy, shall

extend outside of the outdoor cultivation area.

(4) 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 indoor or outdoor

cultivation of marijuana shall not subject residents of neighboring parcels who are of

normal sensitivity to reasonably objectionable odors.

(5) 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 outdoor or indoor cultivation of medical marijuana in violation of the California

Health and Safety Code or this article.

(6) The use of light assistance for the outdoor cultivation of marijuana shall not

exceed a

maximum of four hundred (400) watts of lighting capacity per one hundred (100) square feet of

Cultivation area.

(7) All lights used for the Indoor or Outdoor 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.

Grow light systems associated with Indoor 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. Grow light systems shall not be allowed for Outdoor Cultivation.

(8) The Indoor or Outdoor Cultivation of Marijuana shall not exceed the noise level standards as set forth in the County General Plan.

(9) 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 in such a manner as to allow law enforcement officers to easily see

the recommendation or Affidavit without having to enter any building of any type. 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.

(10) 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

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(b) shall obtain assigned 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(J)(9), 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.

(11) 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 waterwell, 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. (K) Nothing herein shall limit

the ability of Fire District or other appropriate County employees or agents from entering

the property to conduct the inspections authorized by or necessary to ensure compliance with

this 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 maybe required.

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Section 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 one

thousand (1000) 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 one thousand (1000) 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 one thousand (1000) feet of the Premises. Section 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 from taking

immediate abatement action without notice of any Marijuana which is cultivated, possessed,

or distributed in violation of state law.

Section 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

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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 or occupant is required to abate the unlawful

Marijuana Cultivation within five (5) calendar days after the date that said Notice was

served.

(G) Contain a statement that the legal owner or occupant may, within five (5) calendar days

after the date that said Notice was served, make a request in writing to the Clerk of the

Board of Supervisors for a hearing to appeal the determination of the Enforcing Officer that

the conditions existing constitute a public nuisance, or to show other cause why those

conditions should not be abated in accordance with the 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 as a special assessment added to

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the County assessment roll and become a lien on the real property, or be placed on the

unsecured tax roll.

Section 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 deposit in the U.S. Mail.

Section G-IV 5.9 Administrative Review.

(A) The Board of Supervisors delegates the responsibility to conduct a lien hearing in

conformance with this Article to a Hearing Officer.

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(B) Any person upon whom a Notice to Abate Unlawful Marijuana Cultivation has been served may

appeal the determination of the Enforcing Officer that the conditions set forth in the

Notice constitute a public nuisance to the Hearing Officer, or may show cause before the

Hearing Officer why those conditions should not be abated in accordance with the provisions

of this Article. Any such administrative review shall be commenced by filing a written

request for a hearing with the

Sheriff's Office within five (5) calendar days after the date that said Notice was served.

The written request shall include a statement of all facts supporting the appeal. The time

requirement for filing such a written request shall be deemed jurisdictional and may not be

waived. In the absence of a timely filed written request that complies fully with the

requirements of this Section, the findings of the Enforcing Officer contained in the Notice

shall become final and conclusive on the sixth day following service of the Notice.

(C) Upon timely receipt of a written request for hearing which complies with the requirements

of this Section, the Sheriff's Office shall set a hearing date not less than five (5) days or

more than thirty (30) days from the date the request was filed. The Sheriff's Office shall

send written notice of the hearing date to the requesting party, to any other parties upon

whom the Notice was served, and to the Enforcing Officer.

(D) Any hearing conducted pursuant to this 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.

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The Hearing Officer has discretion to exclude evidence if its probative value is substantially

outweighed by the probability that its admission will necessitate undue consumption of time.

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

(F) The Hearing Officer shall consider the matter de novo, and may affirm, reverse, or modify

the determinations contained in the Notice to Abate Unlawful Marijuana Cultivation. The

Hearing Officer shall issue a written decision in the form of a resolution, which shall

include findings relating to the existence or nonexistence of the alleged unlawful Marijuana

Cultivation, as well as findings concerning the propriety and means of abatement of the

conditions set forth in the Notice. Such decision shall be mailed to, or personally served

upon, the party requesting the hearing, any other parties upon whom the Notice was served,

and the Enforcing Officer.

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

Section 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.

Section 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) days of the date of service of the

Notice to Unlawful Marijuana Cultivation, unless timely appealed, or as of the date of the

decision of the Hearing Officer requiring such abatement, the Enforcing Officer may take one

or more of the following actions:

(1) Enter upon the property and abate the nuisance by County personnel, or by private

contractor under the direction of the Enforcing Officer. The Enforcing Officer may apply to

a court of competent jurisdiction for a warrant authorizing entry upon the property for

purposes of undertaking the work, if necessary. If any part of the work is to be

accomplished by private contract, that contract shall be submitted to and approved by the

Board of Supervisors prior to commencement of work. Nothing herein shall be construed to

require that any private contract under this Code be awarded through competitive bidding

procedures where such procedures are not required by the general laws of the State of

California; and/or

(2) Request that the County Counsel commence a civil action to redress, enjoin, and abate the

public nuisance; 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. Section 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 Officers showing the cost of abatement and the

administrative costs for each parcel. Section 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 there with a notice informing the owner that, at a date

and time not less than five (5) business days after the date of mailing of the notice,

the Hearing Officer will meet to review the account and that the owner may appear at said time

and be heard. The owner may waive the hearing on the accounting by paying the cost of

abatement and the cost of administration to the Enforcing Officer prior to the time set for

the hearing by the Hearing Officer. Unless otherwise expressly stated by the owner, payment

of the cost of abatement and the cost of administration prior to said hearing shall be deemed

a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

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Section 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 shall also determine whether or not the owner(s) had actual knowledge of the unlawful Marijuana Cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner(s) did not have actual knowledge of the unlawful Marijuana Cultivation, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such Parcel or otherwise attempted to be collected from the owner(s) of such Parcel.

Section G-IV 5.16 Modifications.

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

Section G-IV 5.17 Special Assessments and Lien.

The Board of Supervisors may order that the cost of abating nuisances pursuant to this Article and the administrative costs as confirmed by the Board be placed upon the County tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the Government Code; provided, however, that the cost of abatement and the cost of administration as finally

determined

shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax

roll. The Board of Supervisors may also cause notices of abatement lien to be recorded

against the respective parcels of real property pursuant to section 25845 of the Government

Code.

Section 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. 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.

Section 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.