

ORDINANCE NO. 1563

**AN ORDINANCE AMENDING SECTIONS OF CHAPTER 7.40
MARIJUANA CULTIVATION**

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on the 4th day of, April 2017 by the following vote:

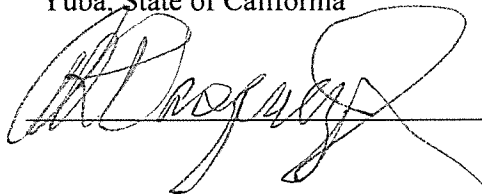
AYES: Supervisors Vasquez, Lofton, Bradford

NOES: Supervisor Leahy


ABSENT: Supervisor Fletcher

ABSTAIN: None

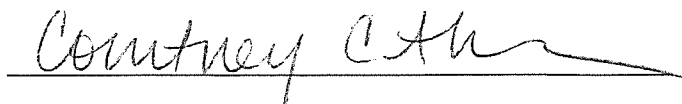
Chairperson of the Board of Supervisors County of
Yuba, State of California



ATTEST: Donna Stottlemeyer
Clerk of the Board of Supervisors



APPROVED AS TO FORM: Angil Morris-Jones
County Counsel



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

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

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

CHAPTER 7.40

**MEDICAL AND NON-MEDICAL
MARIJUANA CULTIVATION
FOR PERSONAL USE**

Sections

- 7.40.100 Authority**
- 7.40.110 Purpose and Intent**
- 7.40.120 Findings**
- 7.40.130 Scope**
- 7.40.140 No Vested Rights**
- 7.40.150 Responsibilities**
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- 7.40.300 Cultivation Restrictions**
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- 7.40.630 Fairness of Hearings**

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- 7.40.640 Order of Proceeding at Hearing**
- 7.40.645 Speakers' Presentation**
- 7.40.650 Submission of Additional Written Evidence and Argument**
- 7.40.655 Field Trips**
- 7.40.660 Recording**
- 7.40.670 Decision**
- 7.40.680 Severability**

ARTICLE I GENERAL PROVISIONS

7.40.100 Authority

Pursuant to authority granted by Article XI Section 7 of the California Constitution, Sections 11362.2(b)(1) and 11362.83(c) of the California Health and Safety Code and Section 25845 of the California Government Code, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.40.110 Purpose & Intent

The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to the cultivation of marijuana for personal medical and non-medical use in order to reduce conditions that create public nuisances through enacting these regulations including without limitation, restrictions as to location of cultivation, the number of marijuana plants, and the use of screening and security structures, to more effectively control the adverse impacts associated with marijuana cultivation, while considering the desires of the general public, qualified patients, primary caregivers, and individuals who cultivate medical and non-medical marijuana, for personal use, in furtherance of the public necessity, health, safety, convenience, and general welfare within the Board's jurisdictional limits. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, manufacture, transportation, and/or distribution of marijuana in violation of state or federal law regulating such activities.

7.40.120 Findings

- A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
- B. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- C. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or

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

- D. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.
- E. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the Medical Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
- F. In 2015 the State enacted AB243, AB266 and SB643 (known as the Medical Cannabis Regulation and Safety Act or "MCRSA"). The three bills created the Bureau of Medical Marijuana Regulation to oversee commercial activities related to the cultivation, testing, manufacturing, distribution and dispensing of medical marijuana in conjunction with the Department of Food and Agriculture and the Department of Public Health. The MCRSA also established the regulatory framework for licensing each activity associated with commercial medical marijuana, including authorizing local jurisdictions to also license and regulate commercial activities related to medical cannabis, while preserving a local jurisdiction's ability to further regulate personal use medicinal marijuana up to and including a complete ban.
- G. In 2016, the voters of the State of California approved Proposition 64, The Adult Use of Marijuana Act (AUMA) which, among other things, legalizes marijuana cultivation, possession and use for those 21 years of age, and older, for personal non-medical use with some limitations. The Act further provides the regulatory framework to license, regulate, and tax non-medical cannabis for commercial activities through a variety of State Agencies with the ultimate oversight lying with the Bureau of Cannabis Regulation – formerly the Bureau of Medical Marijuana Regulation. The AUMA also authorizes local jurisdictions to further regulate, license and tax commercial cannabis activities, including allowing the reasonable regulation of personal use non-medical marijuana.
- H. The County's geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, provide conditions that are favorable to outdoor marijuana cultivation, thus growers can achieve a high per-plant yield. The Federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about one-half (1/2) pound, to 846 grams, or nearly two (2) pounds.

- I. The strong distinctive odor of marijuana plants creates an attractive nuisance, alerting persons to the location of the valuable plants, and has resulted in burglary, robbery and armed robbery.
- J. The strong and distinctive odor of marijuana plants creates a need to ensure that smells that disrupt the use of adjacent properties are minimized, much in the same way that the County has ordinances currently in place to minimize the smells associated with raising livestock.
- K. Children (minor under the age of 18) are particularly vulnerable to the effects of marijuana use and the presence of marijuana plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations).
- L. The unregulated cultivation of marijuana in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.
- M. 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, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.
- N. 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.
- O. Outdoor marijuana cultivation, especially within the foothills, is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities.
- P. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate medical marijuana plants for medical purposes, as well as the legalization to cultivate marijuana for recreational use does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the complaints of odor and the risks of fire, crime and pollution caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Yuba County.

- Q. Nothing in this Chapter shall be construed to allow the use of marijuana for medical and/or non-medical purposes, or allow any activity relating to the cultivation, manufacture, transportation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.
- R. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California 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 . . .” Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that “there is no right—and certainly no constitutional right—to cultivate medical marijuana . . .” The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- S. State law authorizes a person 21 years, or older, to possess, process, transport, purchase, obtain, or give away, without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis and not more than 8 grams of concentrated cannabis for personal medical and/or non-medical use.
- T. State law authorizes a person 21 years, or older, to possess, plant, cultivate, harvest, dry, or process not more than 6 (six) living marijuana plants and possess the marijuana produced by the plants.
- U. State law exempts from licensure the cultivation of a limited number of marijuana plants for both medical and non-medical personal use and authorizes local jurisdictions to reasonably regulate cultivation through local land use and zoning laws.

7.40.130 Scope

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

7.40.140 No Vested Rights

The provisions contained in this Chapter shall supersede any previous regulations related to marijuana cultivation. No person, firm, corporation or entity shall have any vested right to cultivate marijuana in any manner that is contrary to or inconsistent with the provisions contained herein.

7.40.150 Responsibilities

- A. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.

- B. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.40.160 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2 DEFINITIONS

7.40.200 Definitions

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

- A. "Accessory Structure" means a legally built attached garage, or a separately permitted building located on the same parcel as the residence.
- B. "Code" means the Yuba County Ordinance Code.
- C. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
- D. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
- E. "County" means the County of Yuba.
- F. "Cultivation" for the purpose of this Chapter, means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof, for medical and non-medical personal use. "Defined Area of Cultivation" means a single, indoor, area wherein all portions of cultivation are within one accessory structure or residence, the structure or residence is lockable, and is completely screened from public view.
- G. " Dwelling" means a building intended for human habitation that has been legally established, permitted and certified as a single-family or multi-family dwelling.

- H. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.
- I. "Fence" means a solid wall or a barrier connected by boards (redwood or cedar), masonry, rails, panels, or any other materials typically utilized for residential fences (subject to the approval of the Community Development and Services Agency) for the purpose of enclosing, securing, and screening space from public view. The term "Fence" does not include retaining walls.
- J. "Indoors" means within a fully enclosed structure, with a solid roof, and walls. The structure must be securable against unauthorized entry and constructed of solid materials such as 3/8" or thicker plywood, glass, or equivalent materials. Shade-cloth covered and plastic sheeting covered, regardless of gauge, or similar products do not satisfy this requirement.
- K. "Manufacture" or "Manufacturing" means compounding, converting, producing, deriving, processing, or preparing, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, marijuana products.
- L. "Marijuana" Shall have the same meaning as Section 11018 of the California Health and Safety Code. For the purposes of this Chapter, "Marijuana" shall include the terms: "Medical Marijuana", "Non-Medical Marijuana", "Recreational Marijuana" and/or "Cannabis" and shall be limited to personal use and not for commercial purposes.
- M. "Marijuana plant" means any mature or immature marijuana plant including the stalks of the plant.
- N. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.
- O. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.
- P. "Primary Caregiver" shall have the same meaning as "primary caregiver" as defined in the California Health and Safety Code, commencing with Sections 11362.5(e) and 11362.7(d), and as further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Ca1.4th 274.
- Q. "Public View" shall mean as viewed at ground level, without the use of a ladder or similar device, from any place the general public has a lawful right to be including the public right of way, a public way or neighboring premises.
- R. "Qualified Patient" shall have the same meaning as "qualified patient" as defined in the California Health and Safety Code, Section 11362.7(f).
- S. "Residence" shall have the same meaning as Section 11362.2(b)(5) of the California Health and Safety Code. "Residence" shall be synonymous with "dwelling".
- T. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

**ARTICLE 3
RESTRICTIONS AND REQUIREMENTS**

7.40.300 Cultivation Restrictions

- A. Outdoor cultivation of marijuana on any Parcel is prohibited.
- B. Cultivation of more than six (6) marijuana plants within a single Residence or within a single Accessory Structure on any Parcel is prohibited. The foregoing limitation shall be imposed regardless of the number of individuals residing on the Parcel or participating directly or indirectly in the cultivation.
- C. Marijuana cultivation shall not adversely affect the environment or the public health, safety, or general welfare by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, or vibration, by the use or storage of plant or animal poisons, or hazardous materials, processes, products or wastes, or by any other way.
- D. No portion of any structure shall be altered unless a building permit has first been obtained, and under no circumstance shall any alteration or use of any equipment create a fire, life, safety hazard.

7.40.310 Cultivation Requirements

- A. Cultivation may only occur on a Parcel improved with an occupied, legally established, Residence in conformance with this Chapter. The cultivation shall be contained within the Defined Area of Cultivation within a residence or in one, single, residential accessory structure affixed to the real property that:
 - 1. Meets the definition of "Indoor;"
 - 2. That is located on the same Parcel as the Dwelling;
 - 3. That is lockable to prevent unauthorized access, and
 - 4. That complies with all of the provisions of the Yuba County Code relating to accessory structures including, but not limited to, the County's Development Code in Title XI, and construction codes in Title X of the Yuba County Ordinance Code. Where the provisions of this Chapter are more restrictive than other portions of the Yuba County Code the provisions of this Chapter shall govern.
- B. All persons and entities engaging in the cultivation of marijuana shall:
 - 1. Have a legal water source on the Parcel;
 - 2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation; and
 - 3. Not permit illegal discharges of water from the parcel.

7.40.320 Structure Requirements

- A. Structures used for the cultivation of marijuana shall meet all of the following criteria:
 - 1. The residence or accessory structure, regardless of size, shall be legally constructed with all applicable development permits including, but not limited to, grading, structural, electrical, mechanical and plumbing approved by the applicable authorities prior to any cultivation activity. The conversion of any existing structure, or portion thereof, for cultivation shall be subject to these same permit requirements and must be inspected for compliance by the applicable authorities prior to any cultivation.
 - 2. An accessory structure shall not be built or placed within any mandatory setback

required by the Yuba County Ordinance Code.

3. The residence or 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 residence or accessory structure shall be equipped with an odor control filtration and ventilation system adequate to prevent humidity, or mold problems within the structure, and odors from exiting the structure.
5. If an 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 as described in Section 7.40.330 below.

7.40.330 Fencing

- A. Accessory structures that are required to be surrounded by a solid fence shall have a fence that is at least six (6) feet but not greater than (8) feet in height with a locking gate and conform to the following:
 1. Fencing materials shall be in compliance with Section 7.40.200:K;
 2. Location of fence shall meet zoning setback and height requirements;
 3. Fences over seven (7) feet in height will require proof of an approved building permit; and
 4. The fence and gate must be adequately secure to prevent unauthorized entry and keep the area out of reach of minors.

Exception: Topography, natural vegetation, bushes or hedgerows alone may constitute an adequate fence for the purposes of this Section, but shall be subject to the approval of Yuba County Community Development and Services Agency (CDSA).

ARTICLE 4 PUBLIC NUISANCE

7.40.400 Conditions Creating Public Nuisance

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

- A. Any person owning, leasing, occupying or having charge or possession of any Parcel within the unincorporated area of the County to cause or allow such Parcel to be used for the cultivation of marijuana in violation of the provisions contained herein.
- B. The cultivation of marijuana on a Parcel that does not have an occupied legally established Dwelling in conformance with this Chapter.
- C. Marijuana plants in public view as defined in Section 7.40.200 of this Chapter.
- D. The cultivation of marijuana in a manner that exceeds six(6) plants.
- E. The improper use, storage and/or disposal (per the manufacturer's instructions and/or any law that governs same) of chemicals, fertilizers, gas products (CO₂, butane, etc.) or any other

products or equipment associated with the cultivation of marijuana.

- F. Any violation of any Ordinance or State law or any public nuisance defined or known at common law or in equity jurisprudence.

ARTICLE 5 ENFORCEMENT

7.40.500 Enforcement Authority

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

7.40.510 Right of Entry/Inspection

To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of cultivating marijuana. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.40.520 Violations

- A. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
- B. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
- C. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.40.530 Remedies

- A. Any violation of this Chapter may be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
- B. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.
- C. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.
- D. The remedies provided in this Chapter are cumulative to all other remedies now or hereinafter available to abate or otherwise regulate or prevent violations related to the cultivation of marijuana.

7.40.540 Notice and Order to Abate

- A. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner and/or the alleged violator that a public nuisance exists. As to an owner, the

Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and/or alleged violator at the same addresses. A copy shall also be posted on the property. The Enforcement Official shall complete a proof of service.

- B. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance, and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain, normally being three (3) business days, as determined necessary for such abatement by the Enforcement Official. Based upon the nature and complexity of the abatement process, the Enforcement Official shall identify the date certain for compliance on the Notice and Order to Abate Public Nuisance.

7.40.550 Administrative Penalties

- A. Any person who violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and/or administrative costs incurred by the County any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
 - 1. A penalty of \$100.00 for each violation of this Code per day as set forth in the Notice and Order to Abate.
 - 2. A penalty of \$200.00 for each violation of this Code per day when a second violation of this Code occurs within eighteen (18) months of a previously issued Notice and Order to Abate.
 - 3. A penalty of \$500.00 for each violation of this Code per day for each subsequent violation of this Code beyond the second when the violation occurs within thirty-six (36) months of the original Notice and Order to Abate.
- B. For the purpose of calculating the daily Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each marijuana plant in violation of this Chapter shall be charged as a separate violation.
- C. The Administrative Penalty, pursuant to this Section, shall begin to accrue upon the expiration of the time to remedy the violations as set forth in the Notice and Order to Abate Public Nuisance and shall continue to accrue until the date compliance with the Order has been met and verified by the Enforcing Officer. In the event an appeal has been properly filed with the County, the appeal shall have no effect on the Administrative Penalty and said Penalty shall continue to accrue during the pendency of the hearing. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.40.560 Enforcement Costs

- A. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.
- B. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6 APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.40.600 Appeal

Any person who has received a Notice and Order to Abate Public Nuisance pursuant to this Chapter may request an appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be in writing and must be accompanied by a deposit for costs as enumerated in Title XIII of this Code.

7.40.605 Appeal Hearings

Abatement hearings and hearings to determine administrative penalties shall be heard by the Yuba County Board of Supervisors. The Board of Supervisors, in its discretion, may appoint a hearing officer or commissioner to hear and preside over such hearings.

7.40.610 Notice of Hearing

If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Enforcement Official shall schedule a hearing and provide notice to the owner or alleged violator of the time and place the hearing will take place. Notice of the hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. The Enforcement Official shall complete a proof of service. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Enforcement Official.

7.40.620 Powers of the Yuba County Board of Supervisors

The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the

admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

7.40.630 Fairness of Hearings

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.40.635 Evidentiary Rules

The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable 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 such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.40.640 Order of Proceeding at Hearing

The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

- A. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.
- B. A presentation by or on behalf of the appellant shall next proceed.
- C. Tenants or other occupants of the subject property shall speak third.
- D. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
- E. Other interested parties shall speak fifth.
- F. The appellant shall be entitled to rebuttal.

7.40.645 Speakers' Presentation

Each speaker shall approach the microphone and give his or her full name and address for the record.

- A. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for each speaker. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations

are encouraged to submit them in writing. There shall be no limitation upon length of written statements.

- B. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.
- C. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
- D. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.40.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.40.655 Field Trips

Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.40.660 Recording

All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.40.670 Decision

The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.40.680 Severability

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

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

The foregoing instrument is a true and correct copy of the document on file in this office

ATTEST: DONNA STOTTEMEYER

Clerk of the Board of Supervisors of the County of Yuba, State of California

By: *Donna Stottlemyer*

Date: *April 5, 2017*