

ORDINANCE NO. 2000

AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TEHAMA AMENDING CHAPTER 9.06 OF THE TEHAMA COUNTY CODE TO PROHIBIT OUTDOOR CULTIVATION OF MARIJUANA, REGULATE THE STRUCTURES WITHIN WHICH MARIJUANA MAY BE CULTIVATED, AND ESTABLISH AN ALTERNATIVE ABATEMENT PROCESS

THE BOARD OF SUPERVISORS OF THE COUNTY OF TEHAMA ORDAINS AS FOLLOWS:

SECTION 1. The Board of Supervisors of the County of Tehama, by four-fifths vote, hereby finds and declares the following:

- (A) Chapter 9.06 of the Tehama County Code is intended to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Tehama.
- (B) The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in Tehama County and elsewhere demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety. The previous provisions of Chapter 9.06, which allowed limited outdoor cultivation, did not fully mitigate these adverse effects.
- (C) The indoor cultivation marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the residence or otherwise occupying the structure, 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. The previous provisions of Chapter 9.06, which did not restrict the structures in which marijuana may be cultivated, did not fully mitigate these adverse effects.

- (D) Prohibiting the cultivation of marijuana outdoors or within a residence or other structure used or intended for human occupancy is proper and necessary to avoid the aforementioned harms, and to protect the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Tehama.
- (E) Due to unusual climatic and environmental conditions, including the prolonged drought conditions and resultant dry winter, the 2015 outdoor marijuana cultivation season is expected to start early, prior to the end of March. Consequently, outdoor marijuana plantings are imminently likely to occur within the next thirty days, before a non-urgency ordinance could take effect. Additionally, indoor cultivation within a residence or other structure used or intended for human occupancy may occur at any time, and the harm threatened by such cultivation is immediate.
- (F) Adoption of the amendments made by this Ordinance without delay is necessary for the immediate preservation of the public peace, health, and safety, as set forth in Government Code section 25123, subdivision (d), in order to prevent further cultivation of marijuana outdoors or within residences or other structures used or intended for human occupancy in Tehama County, which would threaten significant impacts on the public peace, health, and safety if permitted to occur.
- (G) Adoption of such amendments immediately will further ensure that the prohibition of outdoor marijuana cultivation becomes effective early enough in the outdoor growing season to allow any marijuana plants previously planted outdoors to be transplanted to a permitted indoor structure by the grower, without undue hardship to medical patients and their caregivers eligible to cultivate marijuana in accordance with state law.

SECTION 2. Section 9.06.020 of the Tehama County Code is hereby repealed.

SECTION 3. Section 9.06.020 is hereby added to the Tehama County Code to read:

9.06.020 Findings and Purpose. The Board of Supervisors of the County of Tehama hereby finds and declares the following:

- (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) The intent of Proposition was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The Proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
- (C) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt[] local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.
- (D) Ordinance No. 1936, which established Tehama County's original marijuana cultivation regulations, was upheld by the California Court of Appeal in *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704. The Court specifically held that "[n]either 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 and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concurred that "[n]othing 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 . . ."
- (E) 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.

- (F) The unregulated cultivation of marijuana in the unincorporated area of Tehama County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive 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 cultivation occurs outdoors, or 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.
- (G) Cultivation of any amount of marijuana at locations or premises within 1,000 feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.
- (H) As recognized by the Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (I) The cultivation of marijuana upon vacant lots (i.e., premises without a permitted residential use) presents a heightened risk of the harms that Chapter 9.06 was designed to prevent, including criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards, due to the absence of an onsite caretaker eligible to cultivate marijuana in accordance with state law. Marijuana cultivation upon vacant lots is more likely to violate the registration, setback, plant limit, security, and location requirements of this Chapter than marijuana cultivated accessory to a permitted residential use, is more likely to be diverted to non-medical use, and is less likely to serve the legitimate needs of

medical patients and their caregivers eligible to cultivate marijuana in accordance with state law. Limiting the cultivation of marijuana to premises that contain a permitted residential use is proper and necessary to avoid the aforementioned harms, and to protect the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Tehama.

- (J) It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Tehama. This Chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, 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 Chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of 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 Tehama County.
- (K) The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program 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 aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Tehama County.
- (L) The original provisions of Ordinance No. 1936, as amended by Ordinance Nos. 1980 and 1990, have proven inadequate to control the negative secondary impacts of unregulated marijuana cultivation. Specifically:
 - (i) The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in Tehama County and elsewhere

demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety. The previous provisions of Chapter 9.06, which allowed limited outdoor cultivation, did not fully mitigate these adverse effects. To adequately protect the public health, safety, and welfare, it is proper and necessary to prohibit the outdoor cultivation of marijuana within the unincorporated area of Tehama County.

- (ii) The indoor cultivation marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the residence or otherwise occupying the structure, 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. The previous provisions of Chapter 9.06, which did not restrict the structures in which marijuana may be cultivated, did not fully mitigate these adverse effects.
- (iii) The original administrative abatement provisions of Chapter 9.06 provided lengthy timeframes for appeal and abatement, and required every appeal to be personally heard by the Tehama County Board of Supervisors. These provisions have proven unnecessarily slow, burdensome, and inefficient, creating uncertainty for owners and occupants, hampering enforcement efforts, and unnecessarily prolonging the existence of harmful nuisance conditions. It is proper and necessary to provide an alternative administrative abatement process that more rapidly resolves alleged violations of this Chapter, while preserving due process of law, ensuring accuracy of the factual determinations upon which an abatement is based, and providing the owners and occupants of premises subject to potential abatement with notice and an opportunity to be heard before a neutral decision-maker.

The revised provisions contained in this Chapter are intended to address the aforementioned concerns, and more effectively control the harms caused by unregulated and noncompliant marijuana cultivation, while still accommodating the needs of medical patients and their caregivers to the greatest extent practicable.

- (M) Nothing in this ordinance 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 Chapter deemed a defense or immunity to any action brought against any person by the Tehama County District Attorney, the Attorney General of State of California, or the United States of America.

SECTION 4. Section 9.06.030 of the Tehama County Code is hereby repealed.

SECTION 5. Section 9.06.030 is hereby added to the Tehama County Code to read:

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

- (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.
- (C) "Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
- (D) "Enforcing Officer" means the Health Officer or the Sheriff, or the authorized deputies or designees of either, or any person employed by the County of Tehama and appointed to the position of code enforcement officer, as established by Tehama County Resolution Number 125-1991, each of whom is independently authorized to enforce this Chapter.
- (E) "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 Government Code).
- (F) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling.
- (G) "Outdoor Cultivation" shall mean any cultivation of marijuana that is not conducted within a detached fully enclosed secure accessory structure conforming to the requirements of Section 9.06.035, subdivision (e)(1). Outdoor cultivation includes, without limitation, cultivation of marijuana within a greenhouse or "hoophouse" or similar facility.

(H) "Premises" shall mean 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 Chapter.

(I) "Primary caregiver" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

(J) "Qualified patient" shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

(K) "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 home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

(L) "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.

(M) "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 an emergency or other incident at the school.

(N) "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 6. Section 9.06.035 is hereby added to the Tehama County Code to read:

9.06.035 Nuisance Declared. Subject to Subdivision (H) below, the following regulations shall apply to premises used for marijuana cultivation in the unincorporated area of Tehama County:

- A. The outdoor cultivation of marijuana, in any amount or quantity, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.
- B. The cultivation of more than twelve marijuana plants on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers

residing at the premises or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

- C. The cultivation of marijuana, in any amount or quantity, upon any premises located within one thousand feet of any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.
 - 1. Except as provided in Subdivision (b)(2), such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the 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. If the premises is twenty acres or greater in size, then such distance shall be measured in a straight line from the detached fully enclosed secure accessory structure in which the marijuana is cultivated required by Subdivision (E)(1) to the 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.
- D. The cultivation of marijuana, in any amount or quantity, within a residence or any other structure used or intended for human occupancy is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.
- E. The cultivation of marijuana, in any amount or quantity, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter, unless all of the following conditions are satisfied:
 - 1. The cultivation of marijuana must be conducted within a detached fully enclosed secure accessory structure conforming to the following standards:
 - a. The structure shall be a building completely detached from any residence or other structure used or intended for human occupancy. The structure shall comply with Title 15 of the Tehama County Code, and have a complete roof enclosure supported by connecting walls extending from the ground to

the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments. The structure shall be secure against unauthorized entry, and accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

- b. Any structure, regardless of square footage, constructed, altered or used for the cultivation of marijuana must obtain a building permit from the building official. The intended use of the structure for marijuana cultivation shall be disclosed in the application for a building permit, and the structure shall be inspected for compliance with this Chapter prior to the commencement of any cultivation. The conversion of any existing accessory structure, or portion thereof, for cultivation of marijuana shall be subject to these same permit requirements, and must be inspected by the building official for compliance with this chapter prior to the commencement of any cultivation. Cultivation within any structure may not commence without final approval of the building official.
- c. The maximum electrical panel for the structure shall be 50 amps. Except for temporary use in case of emergency power loss, the use of generators to supply power to any system or activity associated with marijuana cultivation is prohibited.
- e. Light systems utilized in connection with marijuana cultivation shall not exceed one thousand two hundred (1,200) watts, shall comply with all applicable provisions of Title 15 of the Tehama County Code, and shall be shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure.
- f. The structure shall be equipped with odor control filtration and ventilation system(s) adequate to prevent marijuana plant odors from exiting the interior of the structure.
- g. The structure shall have locking doors and a working security system which shall consist of a standard audible residential alarm of at least 90 dB A, but not exceeding 110 dB A.

- h. Such structure shall be accessory to a permitted residential use in accordance with Subdivision (F) of this Section.
- 2. The person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises to the Tehama County Department of Environmental Health, and provided all of the following current information and documentation to the Department:
 - a. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;
 - b. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;
 - c. A copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;
 - d. The number of marijuana plants cultivated on the premises; and
 - e. Such other information and documentation as the department determines is necessary to ensure compliance with State law and this chapter.

This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this chapter or state law, or as otherwise required by law.

The Tehama County Department of Environmental Health may refuse to accept a registration for any premises upon which marijuana cultivation is being conducted, or is proposed to be conducted, in violation of this Chapter. The acceptance of a registration pursuant to this chapter shall not be deemed or construed to be a permit for or approval of any violation of this chapter. The acceptance of a registration shall not prevent the enforcing officer from thereafter requiring correction of violations or from preventing marijuana cultivation being carried out thereunder when in violation of this chapter.

The board of supervisors may, by resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

Every registration under this chapter shall be valid for no more than one calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent of the applicable registration fee. The director of environmental health may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.

3. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. This letter shall be examined by department, and shall then be returned to the submitter. The Department shall prescribe forms for such letters.
4. Each structure in which the marijuana is cultivated shall be set back at least one hundred feet from all boundaries of the premises, unless the enforcing officer, the Hearing Officer, or the board of supervisors reduces or waives this requirement based upon a finding of unusual hardship.

Such setback distance shall be measured in a straight line from the structure in which the marijuana is cultivated to the boundary line of the premises.

- F. The cultivation of marijuana, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter, unless the premises contains a permitted residential use. For purposes of this subdivision, "permitted residential use" shall mean actual residential use of the premises that is conducted in a residential structure or manufactured home on a permanent foundation for which a final certificate of occupancy has been issued in accordance with Title 15 of the Tehama County Code.
- G. No person owning, leasing, occupying, or having charge or possession of any premises within the county shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this chapter.

- H. If this Section is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, the provisions of Section 9.06.040 shall apply to regulate premises used for marijuana cultivation in the unincorporated area of Tehama County.
- I. Subdivisions (A) and (E)(1) of this Section shall not apply to the following marijuana cultivation until January 1, 2016:
 - 1. Marijuana cultivation commenced in full compliance with the provisions of Chapter 9.06 of the Tehama County Code, including the premises registration requirements, as it read prior to the adoption of the Ordinance enacting this section, upon April 1, 2015. Marijuana cultivation described in this subdivision shall be required to comply with the provisions of this Section and Section 9.06.040 pertaining to outdoor marijuana cultivation until December 31, 2015.

SECTION 7. Section 9.06.040 of the Tehama County Code is hereby repealed.

SECTION 8. Section 9.06.040 is hereby added to the Tehama County Code to read:

9.06.040 Nuisance Declared. When this Section is applicable pursuant to Section 9.06.035, subdivision (H), the following regulations shall apply to premises used for marijuana cultivation in the unincorporated area of Tehama County:

- A. The cultivation of more than twelve (12) marijuana plants, either indoors or outdoors, on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.
- B. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises located within one thousand (1,000) feet of any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.
 - 1. Except as provided in Subdivision (B)(2), such distance shall be

measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the 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. If the premises is twenty (20) acres or greater in size, then such distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by Subdivision (c)(3), to the 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.
- C. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless all of the following conditions are satisfied:
1. The person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises to the Tehama County Department of Environmental Health, and provided all of the following current information and documentation to the Department:
 - a. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;
 - b. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;
 - c. A copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;
 - d. The number of marijuana plants cultivated on the premises; and
 - e. Such other information and documentation as the Department determines is necessary to ensure compliance with State law and this Chapter.

This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter or State law, or as otherwise required by law.

The Board of Supervisors may, by Resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

Every registration under this Chapter shall be valid for no more than one calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent (50%) of the applicable registration fee. The Director of Environmental Health may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.

2. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. This letter shall be examined by Department, and shall then be returned to the submitter. The Department shall prescribe forms for such letters.
3. All marijuana grown outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secure to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, or cloth material (tarpaulins) shall not constitute an adequate fence under this Subdivision.
4. Each building or outdoor area in which the marijuana is cultivated shall be set back at least 100 feet from all boundaries of the premises, unless the enforcing officer or the Board of Supervisors reduces or waives this requirement based upon a finding of unusual hardship.

Such setback distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by Subdivision (c)(3), to the boundary line of the premises.

- D. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter, unless the premises contains a permitted residential use. For purposes of this subdivision, "permitted residential use" shall mean actual residential use of the premises that is conducted in a residential structure or

manufactured home on a permanent foundation for which a final certificate of occupancy has been issued in accordance with Title 15 of the Tehama County Code.

- E. No person owning, leasing, occupying, or having charge or possession of any premises within the County shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter.

SECTION 9. Section 9.06.085 is hereby added to the Tehama County Code to read:

9.06.085 Alternative Procedure. As an alternative to the procedures set forth in Sections 9.06.050 through 9.06.080, the enforcing officer may issue a Notice and Administrative Order to Show Cause in accordance with this section. The Notice and Administrative Order to Show Cause may be combined with a notice of violation and proposed administrative penalty issued pursuant to Section 9.06.165.

A. The Notice and Order shall:

1. Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable.
2. Describe the location of such property 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.
3. Identify such property by reference to the assessor's parcel number.
4. Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the enforcing officer to be a public nuisance described in this chapter.
5. Describe the unlawful marijuana cultivation that exists and the actions required to abate it.
6. Contain a statement that the owner or occupant is required to abate the unlawful marijuana cultivation within five (5) calendar days after the date that said notice was served.
7. Notify the recipient(s) that, unless the owner or occupant abates the conditions, a hearing will be held before a Hearing Officer appointed in accordance with this Section to determine whether there is any good cause why these conditions should not be abated. The notice shall specify

the date, time, and location of this hearing, and shall state that the owner or occupant will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated.

8. Contain a statement that, unless the owner or occupant abates the conditions, or shows good cause before the Hearing Officer why the conditions should not be abated, the enforcing officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.
- B. The Notice and Order shall be served in the manner set forth in Section 9.06.070, provided that any service by mail shall be made by overnight mail or overnight courier service. If the Notice and Order is served by overnight mail or overnight courier service, then the time periods set forth in subdivisions (A)(6) and (D) of this Section shall be extended by one (1) additional day. Copies of the Notice and Order shall also be posted in accordance with subdivision (a)(2) of Section 9.06.070, in addition to any other methods of service set forth in that Section. The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.
- C. In order to hear cases brought by the Enforcing Officer under this Section, the Board of Supervisors hereby establishes for such purpose the Office of County Hearing Officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, to which Office the Board of Supervisors shall appoint one or more hearing examiners. Each such hearing examiner shall be an attorney at law having been admitted to practice before the courts of this state for at least five years. Hearing examiners shall be appointed for a period of not less than one year. In the event that the Board appoints more than one hearing examiner, each day of hearings required under this Section shall be assigned to a hearing examiner based upon an alphabetical rotation. Hearing examiners shall have those powers set forth in sections 27721 and 27722 of the Government Code, including the power to conduct the hearing, the power to decide the matter under this Section 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 at the request of a party of interest, 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.
- D. Pursuant to Government Code sections 25845, subdivision (i) and 27721, subdivision (a), the Hearing Officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice

constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated. This hearing shall be held no less than five (5) calendar days after service of the notice.

- E. The owner or occupant of the property shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated.
- F. In the event that the owner or occupant does not appear and present evidence at the hearing, the Hearing Officer may base their decision solely upon the evidence submitted by the Enforcing Officer. Failure of the owner or occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.
- G. Any hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- H. The Hearing Officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the Notice and Order. The Hearing Officer shall issue a written decision, 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. The decision shall be final when signed by the Hearing Officer and served as herein provided.
- I. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within two (2) calendar days of the date of service of the decision of the Hearing Officer under this Section requiring such abatement, the enforcing officer may 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.

- J. The costs of abatement and administrative costs for every abatement carried out under this Section may be recovered in accordance with Sections 9.06.090 and 9.06.120 through 9.06.160.

SECTION 10. Section 9.06.165 of the Tehama County Code is hereby repealed.

SECTION 11. Section 9.06.165 is hereby added to the Tehama County Code to read:

9.06.165 - Administrative Civil Penalties.

- A. In addition to any other remedy prescribed in this Chapter, any nuisance as described in this Chapter may be subject to an administrative penalty of up to one thousand dollars (\$1,000) per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.
- B. Acts, omissions, or conditions in violation of this Chapter that continue, exist, or occur on more than one day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the service date and the effective date are separate violations.
- C. In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the enforcing officer or the court shall provide for a reasonable period of time, not to exceed five (5) calendar days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties.
- D. In determining the amount of the administrative penalty, the enforcing officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require.
- E. The enforcing officer may commence the administrative process by issuance of a Notice of Violation and Proposed Administrative Penalty, which shall state the amount of the proposed administrative penalty and the reasons therefore. The Notice of Violation and Proposed Administrative Penalty may be combined with a Notice to Abate Unlawful Marijuana Cultivation issued pursuant to Section

9.06.050 or a Notice and Administrative Order to Show Cause pursuant to Section 9.06.085. The Notice shall be served by certified mail addressed to all of the following: (i) the owner of the property on which the violation exists, at the address shown on the last equalized assessment roll or as otherwise known to the enforcing officer; (ii) anyone known to the enforcing officer to be in possession of the property subject to the Notice, at the street address of the property; and (iii) any other person known to the enforcing officer who has caused, permitted, maintained, conducted, or otherwise suffered or allowed the violation to exist. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed upon any other person. The Notice shall inform the recipient of their right to request a hearing before the Board of Supervisors in accordance with this section. If such a hearing is not requested within ten (10) days after issuance of the Notice, the proposed penalty shall become final and conclusive, and the person to whom the notice was issued shall immediately make payment of the penalty amount to the county.

- F. If any person to whom the Notice is issued requests a hearing before the Board of Supervisors, the person shall be notified by first class mail, postage prepaid, when the matter has been set for hearing. After the hearing, the Board may impose, modify, or disapprove, in whole or in part, by its own order, the proposed penalty set forth in the notice. The decision of the Board of Supervisors shall be final and conclusive. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in the Board of Supervisors' order shall be made to the county within twenty (20) days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b).
- G. Interest shall accrue on all amounts due under this section, from the effective date of the administrative penalty order, as set forth in this section, to the date paid pursuant to the laws applicable to civil money judgments.
- H. In addition to any other legal remedy, whenever the amount of any administrative penalty imposed pursuant to this Section has not been satisfied in full within 90 days and has not been timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b), or if appealed, such appeal has been dismissed or denied, this obligation may be enforced as a lien against the real property on which the violation occurred.
 - 1. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure section 697.340, and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220, inclusive.

2. Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.
3. Prior to recording any such lien, the enforcing officer shall prepare and file with the Clerk of the Board of Supervisors a report stating the amounts due and owing.
4. The Clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it.
5. The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten (10) days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail is effective on the date of mailing and failure of owner to actually receive notice does not affect its validity.
6. Any person whose real property is subject to a lien pursuant to this Section may file a written protest with the Clerk of the Board of Supervisors and/or may protest orally at the Board of Supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.
7. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.
8. Within 30 days following the Board of Supervisors' adoption of a resolution imposing a lien, the Clerk of the Board of Supervisors will file same as a judgment lien in the Tehama County Recorder's Office.
9. Once the County receives full payment for outstanding principal, penalties, and costs, the Clerk of the Board of Supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Tehama County Recorder's Office. This notice of satisfaction will cancel the County's lien under this section.
10. The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. There shall be no right to trial by jury. The County shall be entitled to its attorney's fees and costs.

- I. Administrative penalties imposed pursuant to this section shall also constitute a personal obligation of each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event that administrative penalties are imposed pursuant to this section on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the county may prosecute a civil action through the office of the county counsel to collect any administrative penalty imposed pursuant to this section.
- J. Payment of administrative penalties under this Section does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Notice of Violation and Proposed Administrative Penalty. The payment of administrative penalties does not bar the County from taking any other enforcement action regarding a violation that is not corrected.

SECTION 12. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 13. The Board of Supervisors hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (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 Board of Supervisors further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment). The Chief Administrator is hereby directed to file a Notice of Exemption.

SECTION 14. This Ordinance is an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety. Pursuant to Government Code section 25123, subdivision (d), this ordinance shall take effect immediately upon adoption by four-fifths of the Board of Supervisors, and prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least one time in the *Red Bluff Daily News*, a newspaper of general circulation in Tehama County.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Tehama, State of California, at a regular meeting of the Board of Supervisors on the 3rd day of March, 2015 by the following vote: