

Medical Marijuana - Ordinance Comparison Study 2016				
25-Jul-16	v3			
Jo Ann Rebane -				
Subject/Category	Sub-category	Ordinance #2349	Emergency Ordinance / W Ordinance # 2405 12jan2016	Urgency Replacement Ordinance post July 19, 2016
Who wrote it		Nevada County Board of Supervisors with citizen & patient/cultivator input	Nevada County Board of Supervisors with Sheriff input	2 supervisors & reps from MMJ community. 3 meetings but no consensus reached.
Stated Purpose(s)		Implement State law by regulating cultivation of medical marijuana; balance the needs of medical patients while promoting the health, safety and general welfare of the residents and business in unincorporated Nevada County	Implement State law by regulating cultivation of medical marijuana; balance the needs of medical patients while promoting the health, safety and general welfare of the residents and business in unincorporated Nevada County, and to address the adverse impacts previous local regulations have failed to curtail.	Measure W defeated. Necessary to uphold commitment to repeal outdoor ban & adopt other regulations. (This Urgency Ordinance adds subsections to Ordinance #2405 & amends other subsections.)
Other/Implied purpose(s)		Respond to citizen complaints regarding noxious ordors and safety issues. Try to stop NC from becoming the next Mendocino County (of the green MJ triangle).	To respond to increased MJ cultivation in the county as surrounding counties tighten rules. To avoid new State regs from taking effect precluding County's ability to exercise local control.	To respond to increased MJ cultivation in the county as surrounding counties tighten rules. Provide certainty & guidance to MMJ growers. Preserve public peace, health & safety in county by regulating public nuisances associated with MMJ
Definitions		25 specific definitions	27 specific definitions	27 specific definitions
Activities Regulated				
	Distribution	silent	no commercial	no commercial
	Transportation	silent	no commercial	no commercial
	Storage	out of sight & smell		out of sight & smell
	Use	medical use only w recommendation	medical use only w doctor's Rx	medical use only in accordance with federal, state & local law.
	Collective/Co-op	allowed at patient's or caregiver's primary residence	allowed at patient's or caregiver's primary residence	allowed at patient's or caregiver's primary residence & only in permitted zones
	Commercial	silent	prohibits all commercial cannabis activity in any amount or quantity	prohibits all commercial cannabis activity in any amount or quantity
Cultivation area & Zone				
	R-1,2,3	max 100 sf indoor; or if >2 acres 75 sf outdoors or 6 plants	max 12 plants indoor - only in permitted structure	no cultivation (no indoor or outdoor)

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	R-A	same as R-1,2,3 (above)	max 12 plants indoor - only in permitted structure	no cultivation on parcels =< 5 acres; 5-10 acres max 12 plants indoors only; 10-20 acres max 16 plants grown outdoors in staked area not to exceed 800 sqft or max 12 indoors; greater than 20 acres, max 25 plants in staked area not to exceed 1000 sqft or max 12 indoors
	AG, AE, FR, TPZ	<2 acres 100 sf indoors or 150 sf outdoors	max 12 plants indoor - only in permitted structure	<2 acres, no cultivation
		2-5 acres 100 sf indoors or 300 sf outdoors	max 12 plants indoor - only in permitted structure	2-5 acres, max 12 plants, indoor only
		5-10 acres 100 sf indoors or 400 sf outdoors	max 12 plants indoor - only in permitted structure	5-10 acres, max 12 plants in or outdoors, if outdoors in staked area not to exceed 600 sqft
		10-20 acres 100sf indoors or 600 sf outdoors	max 12 plants indoor - only in permitted structure	10-20 acres, max 16 plants in or outdoors, 12 max inside, if outdoors in staked area not to exceed 800 sqft
		20+ acres 100 sf indoors or 1000 sf outdoors	max 12 plants indoor - only in permitted structure	> 20 acres, max 25 plants in or outdoors, 12 max inside, if outdoors in staked area not to exceed 1000 sqft
	<i>All other zones (airport, commercial, business park, office professional, SDA, industrial, rural, estate, etc.)</i>	not allowed - cultivation prohibited	not allowed - cultivation prohibited	not allowed - cultivation prohibited
Cultivation misc.				
	<i>Residency requirement</i>	patient or caregiver must live in as primary legal residence on legal parcel	patient or caregiver must live in as primary legal residence on legal parcel	patient or caregiver must live in as primary legal residence on legal parcel
	<i>Where to grow</i>			only on a legal parcel with a permanent, occupied, legally permitted residence
	<i>Where to grow</i>	allows indoor OR outdoor cultivation on same property	indoor only	depending on zone, allows indoor and/or outdoor cultivation
	<i>Where to grow</i>	requires contiguous cultivation area	indoor only	outdoors requires contiguous cultivation area, staked or marked for compliance testing
	<i>Where to grow</i>	requires cultivation areas to be on a single plane (prohibits terracing)	indoor only	silent on terracing

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	<i>Fencing</i>	requires sight obscuring fencing 6 to 8 ft high with locked gate.	shielded from public view & locked when not attended by patient	requires sight obscuring fencing 6 to 8 ft high & locked when not attended by patient
	<i>Lighting</i>	lights must be shielded & downcast & not exceed boundaries of parcel. No outdoor "grow" lights.	lights must be shielded & downcast. Must not exceed 1200W.	lights must be shielded & downcast. Must not exceed 1200W.
	<i>Visibility</i>	no part of MJ plant shall be visible from roads or exceed fence height	no exterior evidence of MMJ cultivation from any road	no exterior evidence of MMJ cultivation from any road
	<i>Odor control</i>	silent	require adequate ventilation, air filtration & odor control	require adequate ventilation, air filtration & odor control
	<i>Nuisance control</i>	silent	no dust, glare, heat, noise, noxious gas, odors, smoke, traffic, hazardous materials, or waste	no dust, glare, heat, noise, noxious gas, odors, smoke, traffic, hazardous materials, or waste
	<i>New structures</i>	silent	require bldg permits, inspections, & occupancy certificate before starting indoor cultivation	require bldg permits, inspections, & occupancy certificate before starting indoor cultivation
	<i>Noise</i>	silent	not exceed County noise level standards	comply with noise standards for zone
	<i>Hazardous materials</i>	silent	limits on amount/volume stored, setback requirements of 100 ft from private water sources & 200 ft from public water supply. Prohibits production of hazardous waste.	limits on amount/volume stored, setback requirements of 100 ft from private water sources & 200 ft from public water supply. Prohibits production of hazardous waste.
	<i>Water source</i>	silent	parcel must have legal & permitted water source. Drawing surface water prohibited. No illegal water discharge.	parcel must have legal & permitted water source. Drawing surface water prohibited. No illegal water discharge.
	<i>Accessory structures</i>	silent	before starting to grow, structure must meet all applicable codes & must be inspected for compliance	before starting to grow, structure must meet all applicable codes & must be inspected for compliance
	<i>Accessory structures</i>	silent	location must comply with setback rules above	location must comply with setback rules above
	<i>Accessory structures</i>	silent	must have permanent electrical supply, no extension cords allowed & wiring conductors sized per code	must have permanent electrical supply, no extension cords allowed & wiring conductors sized per code
	<i>Accessory structures</i>	silent	must have permanent & permitted odor control etc.	must have permanent & permitted odor control etc.
	<i>Accessory structures</i>	silent	greenhouses must be of glass or polycarbonate, be opaque, screened for security & visibility, else a solid fence.	greenhouses must be of glass or polycarbonate, be opaque, screened for security & visibility, else a solid fence.
	<i>Accessory structures</i>			structure must meet criteria of indoor else be considered outdoor
	<i>Set-backs</i>	grows prohibited 1000 ft from schools, churches, parks, day care centers, school bus stops and youth facilities	grows prohibited 600 ft from schools, churches, parks, day care centers, school bus stops and youth facilities	grows prohibited 600 ft from schools, churches, parks, day care centers, school bus stops and youth facilities

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	<i>R-1,2,3 & R-A set-backs</i>	when < 2 acres 100 ft set-back required from grow to adjacent residence or its outdoor living area; if > 2 acres 200 ft set-back required	100 ft from any legal residence or outdoor living area, including mobil home	setbacks from 150-300 ft (depending on parcel size), measured from edge of grow area to adjacent property line
	<i>AG, AE, FR, TPZ set-backs</i>	depending on parcel acreage setback 100 to 300 ft from grow to adjacent residence or its outdoor living area	depending on parcel acreage setback 100 to 300 ft from grow to adjacent residence or its outdoor living area	setbacks from 150-300 ft (depending on parcel size), measured from edge of grow area to adjacent property line (2-5 acres - 150ft; 5-10 acres - 200ft; >10 acres- 300ft)
Permits				
	<i>Landlord</i>	cultivator must have written & notarized permission from landlord to grow MJ	cultivator must have written & notarized permission from landlord to grow MJ	cultivator must have written & notarized permission from landlord to grow MJ
	<i>County</i>	modifications to electrical or plumbing systems require property owner to obtain county permit & inspection	electrical or plumbing systems require county permit & inspections issued to property owner. Total draw from all electrical appliances shall not exceed panel max rating.	electrical or plumbing systems require county permit & inspections issued to property owner. Total draw from all electrical appliances shall not exceed panel max rating.
	<i>Posting ID & recommendation</i>	patient must post copies of the following OUTSIDE the cultivation area: State Medical Marijuana ID, Dr. recommendation & landlord's permission letter	patient must post copies of the following <i>immediately adjacent</i> to cultivation area: State Medical Marijuana ID, Dr. recommendation & landlord's permission letter	patient must post copies of the following <i>immediately adjacent</i> to cultivation area: State Medical Marijuana ID, Dr. recommendation & landlord's permission letter
	<i>Grading</i>			silent on terracing/grading
Misc.				
	<i>Differences</i>		provisions of Ordinance where more restrictive than other codes shall govern.	provisions of Ordinance where more restrictive than other codes shall govern.
	<i>Inspections</i>		no limits on bldg dept, fire marshall, state or local agents from entering property to inspect for compliance. Sheriff to make initial and compliance checks.	no limits on bldg dept, fire marshall, state or local agents from entering property to inspect for compliance. Sheriff to make initial and compliance checks.
	<i>Land use changes</i>		If requested, Sheriff shall inform schools etc. when proposed new facility is w/in 600 ft. of a current MMJ cultivation site.	If requested, Sheriff shall inform schools etc. when proposed new facility is w/in 600 ft. of a current MMJ cultivation site.
Enforcement				
	<i>Enforcement Officer</i>	County Sheriff shall determine whether a public nuisance or illegal activity exists		Sheriff or deputies, Community Development Director or designees, Environmental Health Director or designees, or others authorized to enforce local, state, or federal law

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	<i>Enforcement</i>	Where abatement doesnot occur w/in 5 days of notice & no timely appeal, enforcing officer may cause abatement, request a civil action, issue administrative citations, or take other legal action.		Where abatement doesnot occur w/in 5 days of notice & no timely appeal, enforcing officer may cause abatement, request a civil action, issue administrative citations, or take other legal action.
	<i>Accounting</i>	Enforcing officer's written report includes cost of abatement and administrative costs		Enforcing officer's written report includes cost of abatement, administrative penalties, and administrative costs
	<i>Notice of accounting & waiver by payment</i>	owner may waive hearing by paying cost of abatement and administration which acts as admission that accounting is accurate		owner may waive hearing by paying cost of abatement, administrative penalties, and administration which acts as admission that accounting is accurate
	<i>Hearing Officer</i>	person designated by Bd of Sups to conduct administrative lien hearings		person designated by Bd of Sups to conduct administrative hearings
	<i>Notice to Abate</i>	when a public nuisance exists, notice to abate unlawful MJ cultivation must be served on property owner/tenant		when a public nuisance exists, notice to abate unlawful MJ cultivation must be served on property owner/tenant; immediate, unnoticed abatement may occur if threat to health & safety & appeal procedures would allow continuance of threat
	<i>Notice to Abate</i>	notice states owner/tenant required to abate with in 5 business days; notice informs that appeal be made to clerk of Bd of Sups for hearing w/in 5 days of service		notice states owner/tenant required to abate with in 5 business days; notice informs that appeal be made to clerk of Bd of Sups for hearing w/in 5 days of service
	<i>Appeal/Review</i>	written request for hearing & appeal must specify why the MJ grow should not be abated; sheriff's office shall set hearing date 5-30 calendar days from request		written request for hearing & appeal must specify why the MJ grow does not violate ordinance; clerk shall set hearing date 5-20 calendar days from request; no continuance w/out good cause; unavailability of an attorney is not good cause
	<i>Appeal/Review</i>	hearing officer may affirm, reverse or modify terms of abatement notice; written decision shall include findings re alleged grow, abatement conditions noticed; parties involved shall receive copy of decision which is final.		hearing officer may affirm, reverse or modify terms of abatement notice; written decision shall include findings re alleged grow, abatement conditions noticed, whether any abatement undertaken after notice. Notice of decision to all parties which is final.

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	<i>Abatement</i>	if property owner/tenant fail to remove MJ then county may remove it and recover its costs from property owner/tenant		if property owner/tenant fail to remove MJ then county may remove it and recover its costs from property owner/tenant; Abatement prior to hearing does not absolve owner/grower from paying costs, fees,etc accrued
	<i>Special Assessments & liens</i>	Bd of Sups may order special assessment on tax roll against offending property or tax lien for abatement and administrative costs		Bd of Sups may order special assessment on tax roll against offending property or tax lien for abatement, administrative penalties, and administrative costs
	<i>Summary abatement</i>	If threat to public health & safety cannot be avoided by regular notice and abatement, enforcing officer may cause nuisance to be abated & shall attempt to identify owner/tenant but formal notice & hearing shall not apply. County may recover costs.		If threat to public health & safety cannot be avoided by regular notice and abatement, enforcing officer may cause nuisance to be abated as permitted by law & shall attempt to identify owner/tenant but formal notice & hearing shall not apply. County may recover costs.
	<i>Fines/penalties</i>	Persons who cause or permit unlawful MJ are liable for costs of abatement action. Prevailing party may seek attorney's fees not to exceed amount county incurred in the action.		Persons who cause or permit unlawful MJ are liable for costs of abatement action. Prevailing party may seek attorney's fees not to exceed amount county incurred in the action.
	<i>Administrative civil penalties</i>			An administrative penalty may be imposed; conditions in violation that continue to exist on more than one day are separate violations each day.
	<i>Penalty fee/violating plant/day</i>	none		administrative civil penalties fee schedule: 1st citation in 12 mos - \$100/day/plant, 2nd citation in 12 mos - \$200/day/plant, >2 violations in 12 mos - \$500/day/plant while nuisance unabated;
	<i>Civil penalty - bld'g & safety code</i>			administrative civil penalties fee schedule: 1st citation in 12 mos - \$100/day/violation, 2nd citation in 12 mos - \$500/day/violation, >2 violations in 12 mos - \$1000/day/violation while bld'g & safety violation remains;

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	<i>Lien on real property</i>			If administrative civil penalties imposed not paid in full w/in 90 days, after notice, Bd of Sups shall confirm, discharge or modify lien amount. Judgment lien must be recorded. All persons causing or allowing MJ nuisance to exist jointly liable.
How to Amend or Repeal		Simple majority vote of County Board of Supervisors	Required 4 of 5 Supervisors to approve/adopt	Requires 4 of 5 Supervisors to approve/adopt