



# ORDINANCE No. \_\_\_\_\_

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**AN URGENCY ORDINANCE ADDING SUBSECTIONS G-IV 5.2.W, G-IV 5.4.C.4, G-IV 5.4.E.4, G-IV 5.4.H.14, G-IV 5.4.L, G-IV 5.10.C, G-IV 5.10.D, G-IV 5.10.E, G-IV 5.10.F, AND G-IV 5.15.D TO ARTICLE 5 OF CHAPTER IV, AND AMENDING SUBSECTIONS G-IV 5.2.V, G-IV 5.3.F, G-IV 5.4.C, G-IV 5.4.C.3, G-IV 5.4.E.1, G-IV 5.4.E.2, G-IV 5.4.F, G-IV 5.4.H, G-IV 5.4.H.9, G-IV 5.4, G-IV 5.7.F, G-IV 5.7.G, G-IV 5.8.B, G-IV 5.9.A, G-IV 5.9.B, G-IV 5.9.C, G-IV 5.9.E, G-IV 5.9.F, G-IV 5.10.A, G-IV 5.11, G-IV 5.12.A, G-IV 5.13, G-IV 5.14, G-IV 5.15.C, G-IV 5.16, G-IV 5.17, G-IV 5.18 OF ARTICLE 5 OF CHAPTER IV, OF THE NEVADA COUNTY GENERAL CODE REGARDING MARIJUANA CULTIVATION REGULATIONS (4/5ths AFFIRMATIVE VOTE REQUIRED)**

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

### SECTION I:

Subsections G-IV 5.2.W, G-IV 5.4.C.4, G-IV 5.4.E.4, G-IV 5.4.H.14, G-IV 5.4.L, G-IV 5.10.C, G-IV 5.10.D, G-IV 5.10.E, G-IV 5.10.F, AND G-IV 5.15.D are hereby added to Article 5 of Chapter IV of the Nevada County General Code to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

### SECTION II:

Subsections G-IV 5.2.V, G-IV 5.3.F, G-IV 5.4.C, G-IV 5.4.C.3, G-IV 5.4.E.1, G-IV 5.4.E.2, G-IV 5.4.F, G-IV 5.4.H, G-IV 5.4.H.9, G-IV 5.4, G-IV 5.7.F, G-IV 5.7.G, G-IV 5.8.B, G-IV 5.9.A, G-IV 5.9.B, G-IV 5.9.C, G-IV 5.9.E, G-IV 5.9.F., G-IV 5.10.A, G-IV 5.11, G-IV 5.12.A, G-IV 5.13, G-IV 5.14, G-IV 5.15.C, G-IV 5.16, G-IV, 517, G-IV 5.18 of Article 5 of Chapter IV of the Nevada County General Code are hereby amended to read as shown in Exhibit B attached hereto and incorporated herein by this reference.

### SECTION III:

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

to assure protection of natural resources), 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION IV:

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

SECTION V:

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

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

# EXHIBIT A

\* \* \* \*

## Sec. G-IV 5.2 Findings and Purpose

\* \* \* \*

W. In January of 2016, the Board of Supervisors passed Ordinance No. 2405 amending this Article, including provisions which banned outdoor cultivation. Also in January of 2016, Resolution 16-038 was passed authorizing the placement of Measure W on the June 2016 ballot. Measure W put amendments made to Article V, Sections G-IV 5.4(C) and (E) to the vote of the people. In February of 2016, the Board of Supervisors passed Resolution 16-082 memorializing the intent of the Board to repeal the ban on outdoor cultivation and to consider and adopt other outdoor regulations if Measure W failed to pass at the next available meeting after the results of the June 7, 2016, election were certified. On June 7, 2016, Measure W failed to pass, and those results were certified on July 19, 2016. Consistent with the intent stated in Resolution 16-082, a Board of Supervisors subcommittee met with local marijuana cultivation advocates on three occasions to attempt to craft regulations to put into place while repealing the outdoor cultivation ban. Consensus was not reached. This action is necessary to uphold the commitment to repeal the outdoor cultivation ban and to adopt other regulations.

## Sec. G-IV 5.4 Nuisance Declared; Cultivation Restrictions

C. Medical Marijuana Cultivation may be undertaken only by:

\* \* \* \*

4. Only for medical purposes in accordance with federal, state and local law.

\* \* \* \*

E. The following limitations apply to Cultivation of Marijuana on each Premises located within the unincorporated area of Nevada County, regardless of the number of Qualified Patients or Primary Caregivers residing at the Premises or participating directly or indirectly in the Marijuana Cultivation activity. These limitations shall be imposed notwithstanding any assertion that the person(s) Cultivating Medical Marijuana are the Primary Caregiver(s) for Qualified Patients or that such person(s) are collectively or cooperatively Cultivating Marijuana.

\* \* \* \*

4. The Cultivation of Marijuana, in any amount or quantity, on property located in any other zoning district is hereby prohibited.

\* \* \* \*

H. All Cultivation areas shall comply with the following requirements:

\* \* \* \*

14. Cultivation within any detached Accessory Structure that does not meet the definition and criteria of Indoor shall be considered Outdoor Cultivation.

\* \* \* \*

L. In addition to all other requirements set forth in this Section G-IV 5.4, all Outdoor Cultivation areas shall comply with the following requirements:

1. All Marijuana Cultivated Outdoors must be fully enclosed within a sight obscuring Fence of at least 6 feet but not more than 8 feet in height that fully encloses the garden area. The Marijuana shall be shielded from public view at all stages of growth. Should the Marijuana plant(s) grow higher than the Fence, the Marijuana Plants shall be cut so they do not extend higher than such Fence. All Fences shall comply with Section L-II 4.2.6 of the Nevada County Land Use and Development Code and shall be sufficient to conceal the Marijuana from public view. The Fence must be adequately secure to prevent unauthorized entry and include a locking gate that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area. Said Fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the Fence. Bushes or hedgerows shall not constitute an adequate Fence under this subsection. All Indoor Cultivation areas shall be adequately secure to prevent unauthorized entry, including a secure locking mechanism that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area.

2. Outdoor Cultivation shall be conducted in one contiguous area which is clearly staked or marked as an Outdoor Cultivation area for purposes of determining compliance with the requirements set forth in this Section G-IV 5.4.

\* \* \* \*

### **Section G-IV 5.10 Liability for Costs**

\* \* \* \*

C. Administrative Civil Penalties:

1. In addition to any other remedy prescribed in this chapter, any nuisance as described in this chapter may be subject to an administrative penalty. The administrative penalty may be imposed via the administrative process set forth in this Section, as provided by Government Code section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.

2. Acts, omissions, or conditions in violation of this chapter that continue to 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 date of service of the Notice of Violation and the effective date are separate violations.

3. In addition to the afore-stated attorneys' fees and costs associated with abatement proceedings, any owner and/or occupant of a property on which Marijuana is being cultivated in violation of this Article or any other regulation related to Marijuana Cultivation will be subject to the imposition of administrative civil penalties as follows:

a. First citation in a 12-month period: \$100 per day/per violation that nuisance remains unabated;

b. Second citation in a 12-month period: \$200 per day/per violation that nuisance remains unabated;

c. Any violation thereafter in a 12-month period: \$500 per day/per violation that nuisance remains unabated;

d. Each Marijuana Plant cultivated in violation of this Article shall constitute a separate violation and is subject to the imposition of a per plant/per day penalty as set forth G-IV 5.10(C)(3)(a-c), and as determined by the Enforcing Officer and/or Hearing Officer(s);

- e. Each day or part of any day a nuisance exists or continues to exist constitutes a separate violation;
  - f. Nothing in this Article precludes an Enforcing Officer(s) from conducting inspections day to day as permitted by law to determine if a violation has been abated or otherwise corrected;
  - g. These administrative penalties will begin to accrue on the date the Notice of Violation and Proposed Administrative Penalty is served and will continue to accrue until the nuisance is abated to the satisfaction of the Enforcing Officer or as otherwise directed by a Hearing Officer presiding over any hearing regarding abatement of the nuisance;
  - h. These amounts are separate and apart from any administrative civil penalties that may be imposed as permitted under the law for building or safety code violations;
  - i. In determining the amount of the administrative penalty to be imposed, the Enforcing Officer, Hearing Officer(s), 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.
4. Separate, apart from and in addition to the administrative civil penalties described in G-IV 5.10(C) above, the following administrative civil penalties may be assessed for violations of any building and safety codes applicable to the Cultivation of Marijuana as follows:
- a. First citation in a 12-month period: \$100 per day/per violation that nuisance remains unabated;
  - b. Second citation in a 12-month period: \$500 per day/per violation that nuisance remains unabated;
  - c. Any violation thereafter in a 12-month period: \$1000 per day/per violation that nuisance remains unabated;
  - d. Each violation of building and safety codes constitutes a separate violation. Each day or part of any day a nuisance exists constitutes a separate violation;
  - e. Nothing in this Article precludes an Enforcing Officer(s) from conducting inspections day to day as permitted by law to determine if a violation has been abated or otherwise corrected;
  - f. If the violation of the building and safety code is a continuing violation, the Enforcing Officer shall provide a reasonable time, not to exceed five (5) calendar days, for correction of the condition prior to the imposition of penalties. This provision allowing for time to correct the continuing violation does not apply to the administrative civil penalties imposed as a result of any violation other than a violation of the building and safety code as set forth in this subsection;
  - g. 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.
5. 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 therefor. The Notice of Violation and Proposed Administrative

Penalty may be combined with a Notice to Abate Unlawful Marijuana Cultivation issued pursuant to Section G IV 5.6 and related provisions.

6. The Notice of Violation and Proposed Administrative Penalty 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; and (ii) anyone known to the enforcing officer to be in possession of, or occupying, the property subject to the Notice of Violation and Proposed Administrative Penalty, at the street address of the property. 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.

7. The Notice of Violation and Proposed Administrative Penalty shall inform the recipient of their right to request a hearing before the Board of Supervisors. If such a hearing is not requested within ten (10) calendar days after issuance of the Notice of Violation and Proposed Administrative Penalty, 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. If any person to whom the Notice of Proposed Penalty is issued requests a hearing before the Board of Supervisors, or the Hearing Officer to whom the board has delegated authority, in accordance with this section, the person shall be notified by first class mail, postage prepaid, when the matter has been set for hearing. Failure of the person or persons to whom the notice was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.

8. After the hearing, the Board or Hearing Officer(s) may impose, modify, or disapprove, in whole or in part, by written order, the proposed penalty set forth in the notice. The decision of the Board of Supervisors or Hearing Officer(s) shall be final and conclusive. Any order of the Board of Supervisors or Hearing Officer(s) 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 said order shall be made to the County within twenty (20) calendar days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code Section 53069.4(b).

9. Interest shall accrue on all amounts under this section from the effective date of the administrative penalty order, as set forth in this section, to the date fully paid pursuant to the laws applicable to civil money judgments.

10. Administrative civil penalties are assessed on the first day of the Notice of Violation and continue to accrue until the condition is abated. Abatement of unlawful Marijuana Cultivation prior to any hearing or appeal of a Notice to Abate Unlawful Marijuana Cultivation does not absolve the owner and/or occupant of the Premises of the obligation to pay the Administrative Civil Penalties.

11. The Board of Supervisors maintains the right to delegate authority to conduct hearings and render decisions to a Hearing Officer(s).

12. This subsection is effective and will be enforced beginning on January 1, 2017.

D. Lien:

In addition to any other legal remedy, whenever the amount of any administrative civil penalty imposed pursuant to this Article has not been satisfied in full within ninety (90) days and has not been timely appealed to the Superior Court in accordance with Government Code section 536069.4 (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 California Code of Civil Procedure section 697.340, and may be executed as provided in the California 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) calendar 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 the 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 thirty (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 Nevada County Recorder's Office.

9. Once the County receives full payment for outstanding principal, penalties, interest 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 Nevada 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 party 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 attorneys' fees and costs.

E. Administrative penalties imposed pursuant to this Section shall also constitute a personal obligation on each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event the 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.

F. The Board of Supervisors delegates the responsibility to conduct a hearing in conformance with this Article to a Hearing Officer(s).

\* \* \* \*

### **Section G-IV 5.15 Hearing on Accounting**

\* \* \* \*

D. Failure to attend a properly noticed hearing shall constitute a waiver and the Hearing Officer shall issue an order for costs, administrative penalties and fees as requested by the Enforcing Officer at the hearing.

## EXHIBIT B

\* \* \* \*

### Sec. G-IV 5.2 Findings and Purpose

\* \* \* \*

V. In Nevada County, the typical growing season for Marijuana is approximately April through September of each year. Surrounding counties have adopted restrictions and, in some cases, bans on the Cultivation of Marijuana in their jurisdictions. Nevada County continues to encounter increasing numbers of Marijuana Cultivation sites of increasing sizes, in locations which conflict with the provisions of this Ordinance and operate in manners which create public nuisance to the surrounding community and its residents. There is an immediate need to provide certainty and guidance to those who might choose to Cultivate Marijuana in Nevada County and to preserve the public peace, health and safety of Nevada County residents by regulating and addressing the public nuisances associated with Marijuana Cultivation.

### Sec. G-IV 5.3 Definitions

As used herein the following definitions shall apply:

\* \* \* \*

F. "Enforcing Officer" means the Sheriff, or his authorized deputies or designees, Community Development Director or his designees, Environmental Health Director or his designees, or any other official authorized to enforce local, state or federal laws.

\* \* \* \*

### Sec. G-IV 5.4 Nuisance Declared; Cultivation Restrictions

\* \* \* \*

C. Medical Marijuana Cultivation may be undertaken only by and in conformance with the following:

\* \* \* \*

3. On a Legal Parcel improved with a permanent, occupied, legally permitted residence.

\* \* \* \*

E. The following limitations apply to Cultivation of Marijuana on each Premises located within the unincorporated area of Nevada County, regardless of the number of Qualified Patients or Primary Caregivers residing at the Premises or participating directly or indirectly in the Marijuana Cultivation activity. These limitations shall be imposed notwithstanding any assertion that the person(s) Cultivating Medical Marijuana are the Primary Caregiver(s) for Qualified Patients or that such person(s) are collectively or cooperatively Cultivating Marijuana.

1. In areas designated primarily for residential use, Marijuana Cultivation may occur on a Parcel or Premises which serves as a Legally Permitted Primary Residence only as follows:

a. Cultivation of Marijuana, Indoors or Outdoors, is prohibited in all areas zoned as R-1, R-2 and R-3 on Legal Parcels or Premises of any size.

b. In areas designated as Residential and Estate in the Nevada County General Plan and zoned R-A only as follows:



i. Indoor or Outdoor Cultivation of Marijuana on Legal Parcels equal to or less than (5) acres in size is prohibited.

ii. On Parcels greater than 5 acres up to 10 acres in size, a total maximum of 12 plants are permitted to be cultivated Indoors only. No Outdoor cultivation is permitted.

iii. On Parcels which are greater than 10 acres in size up to 20 acres in size, Cultivation of Marijuana is permitted up to a total maximum of 16 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 800 square feet in size.

iv. On Parcels which are greater than 20 acres in size, Cultivation of Marijuana is permitted up to a total maximum of twenty-five (25) plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 1000 square feet in size.

2. In areas designated primarily for agricultural uses (e.g., AG, AE, FR, TPZ and areas designated in the Nevada County General Plan as Rural and zoned R-A), Marijuana Cultivation may occur on a Parcel or Premises which serves as a Legally Permitted Primary Residence only as follows:

a. Indoor or Outdoor Cultivation of Marijuana on Legal Parcels less than or equal to two (2) acres in size is prohibited.

b. Cultivation of Marijuana on Legal Parcels which are greater than two (2) acres up to five (5) acres may not exceed a total maximum of 12 plants, mature or immature, to be Cultivated Indoors only. No Outdoor cultivation is permitted.

c. Cultivation of Marijuana on Legal Parcels which are greater than five (5) acres up to ten (10) acres, may not exceed a total maximum of 12 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 600 square feet in size.

d. Cultivation of Marijuana on Legal Parcels which are greater than ten (10) acres up to twenty (20) acres is permitted up to a total maximum of 16 plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 800 square feet in size.

e. Cultivation of Marijuana on Legal Parcels which are greater than twenty (20) acres is permitted up to a total maximum of twenty-five (25) plants, mature or immature, per Parcel, cultivated Indoors or Outdoors or a combination of both. A maximum of 12 plants may be cultivated Indoors. Cultivation Outdoors must be conducted in one contiguous staked grow area which does not exceed 1000 square feet in size.

\* \* \* \*

F. The following setbacks shall apply to all Indoor and Outdoor Cultivation areas and shall be measured in a straight line from the nearest border of the Outdoor staked grow area or Indoor Cultivation area to the property line of any adjacent Legal Parcel under separate ownership.

1. For all Parcels or Premises:

a. Parcels of greater than 2 acres up to 5 acres: 150 ft.

- b. Parcels of greater than 5 acres up to 10 acres: 200 ft.
- c. Parcels of greater than 10 acres: 300 ft.

\* \* \* \*

H. All Marijuana Cultivation, whether Indoors or Outdoors, shall comply with the following requirements:

\* \* \* \*

9. Noise levels generated by Cultivation shall not exceed the standards set forth in Table L-II 4.1.7 (Exterior Noise Limits) of the Nevada County Zoning Ordinance applicable to the Land Use Category and Zoning District for the Premises on which the Cultivation occurs.

\* \* \* \*

### **Section G-IV 5.6 Notice to Abate Unlawful Marijuana Cultivation**

Whenever the Enforcing Officer determines that a public nuisance as described in this Article exists on any Premises within the unincorporated area of Nevada County, he or she is authorized to notify the owner(s) and/or occupant(s) of the Premises, through issuance of a "Notice to Abate Unlawful Marijuana Cultivation;" provided, however, that nothing in this Article shall affect or preclude the Sheriff, or other Enforcing Officer, from taking immediate abatement action without notice of any Marijuana which is Cultivated, possessed, or distributed in violation of state law or when Marijuana Cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections G-IV 5.6 through G-IV 5.12 would not result in abatement of that nuisance within a short enough time period to avoid that threat.

### **Section G-IV 5.7 Contents of Notice**

The Notice of Abatement set forth in Section G-IV 5.6 shall be in writing and shall:

\* \* \* \*

F. Contain a statement that the legal owner and/or occupant are required to abate the unlawful Marijuana Cultivation within five (5) business days after the date that said Notice was served.

G. Contain a statement that the legal owner or occupant may, within five (5) business days after the date that said Notice was served, make a request in writing to the Clerk of the Board of Supervisors for a hearing to appeal the determination of the Enforcing Officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the Notice and the provisions of this Article.

\* \* \* \*

### **Section G-IV 5.8 Service of Notice to Abate**

The Notice set forth in Sections G-IV 5.6 and G-IV 5.7 shall be served in the following manner:

\* \* \* \*

B. The date of service is deemed to be the date of personal delivery, posting, or upon deposit in the U.S. Mail.

## **Section G-IV 5.9 Administrative Review**

A. The Board of Supervisors delegates the responsibility to conduct a hearing in conformance with this Article to a Hearing Officer(s).

B. Any person upon whom a Notice to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the Enforcing Officer that the conditions set forth in the Notice to Abate constitute a public nuisance to the Hearing Officer(s) or may show cause before the Hearing Officer(s) why those conditions should not be abated in accordance with the provisions of this Article. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within five (5) business days after the date that said Notice to Abate was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed appeal by way of written request for a hearing that complies fully with the requirements of this Section, the findings of the Enforcing Officer contained in the Notice to Abate shall become final and conclusive on the sixth business day following service of the Notice to Abate. The request for a hearing and appeal shall not be deemed complete and shall not be considered unless it specifies why the marijuana cultivation that is subject to abatement in the Notice to Abate Unlawful Marijuana Cultivation is not in violation of this Article.

C. Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the Clerk of the Board of Supervisors shall set a hearing date not less than five (5) calendar days or more than twenty (20) calendar days from the date the request was filed. The Clerk of the Board shall send written notice of the hearing date to the requesting party, to any other parties upon whom the Notice to Abate was served, and to the Enforcing Officer. Continuances of the hearing will only be granted on a showing of good cause. Unavailability of an attorney does not constitute "good cause."

D. Any hearing conducted pursuant to this Article need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

E. The Hearing Officer(s) may continue the administrative hearing from time to time based on showing of good cause as stated above. Unavailability of an attorney does not constitute "good cause."

F. The Hearing Officer(s) shall consider the matter *de novo*, and may affirm, reverse, or modify the determinations contained in the Notice to Abate Unlawful Marijuana Cultivation. The Hearing Officer(s) shall issue a written decision, which shall include findings relating to the existence or nonexistence of the alleged unlawful Marijuana Cultivation at the time the violation was served, findings concerning the propriety and means of abatement of the conditions set forth in the Notice, and whether or not any abatement efforts were made at all after notice of the violation was served. The Hearing Officer(s) shall also determine whether or not the owner(s) had actual knowledge of the unlawful Marijuana Cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. The decision shall be personally served immediately following the hearing, upon the party requesting the hearing, any other parties upon whom the Notice was served, and the Enforcing Officer if the decision is made at the time of the hearing. In the event the Hearing Officer(s) takes the matter under submission, the written findings will be mailed to the parties.

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

## **Section G-IV 5.10 Liability for Costs, Fees and Administrative Civil Penalties**

A. In any enforcement action brought pursuant to this Article, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful Marijuana Cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, costs, attorneys' fees and administrative civil penalties, including any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Article, whether those costs are incurred prior to, during, or following enactment of this Article;

\* \* \* \*

### **Section G-IV 5.11 Abatement by Owner or Occupant**

Any owner or occupant may abate the unlawful Marijuana Cultivation or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the Enforcing Officer. Abatement prior to the hearing will not absolve an owner or occupant from paying costs, fees and administrative penalties which accrued up to the date of abatement. Proof of Abatement should be provided to the Hearing Officer(s) at the time of hearing.

### **Section G-IV 5.12 Enforcement**

A. Whenever the Enforcing Officer becomes aware that an owner or occupant has failed to abate any unlawful Marijuana Cultivation within five (5) business days of the date of service of the Notice to Abate Unlawful Marijuana Cultivation, unless timely appealed, or as of the date of the decision of the Hearing Officer(s) requiring such abatement, the Enforcing Officer may take one or more of the following actions:

1. Enter upon the property and abate the nuisance by County personnel, or by private contractor under the direction of the Enforcing Officer. The Enforcing Officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the Board of Supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or
2. Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance; and/or
3. Issue administrative citations in accordance with Section L-II 5.23, et seq., of the Nevada County Land Use and Development Code; and/or
4. Take any other legal action as may be authorized under State or local law to abate and/or enforce the provisions of this Article.

### **Section G-IV 5.13 Accounting**

The Enforcing Officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Hearing Officer(s) showing the cost of abatement, the administrative penalties, and the administrative costs and fees for each parcel.

### **Section G-IV 5.14 Notice of Hearing on Accounting; Waiver by Payment**

Upon receipt of the account of the Enforcing Officer, the Sheriff's Office shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than five (5) business days after the date of mailing of the notice, the Hearing Officer(s) will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement, the administrative penalties, and the cost of administration to the Enforcing Officer prior to the time set for the hearing by the Hearing Officer(s). Unless otherwise expressly stated by the owner, payment of the cost of abatement, the administrative penalties and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

### **Section G-IV 5.15 Hearing on Accounting**

\* \* \* \*

C. The Hearing Officer(s) shall also determine whether or not the property owner(s) had actual

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

**Section G-IV 5.16 Modifications**

The Hearing Officer(s) shall make such modifications in the accounting as it deems necessary and thereafter shall confirm the report.

**Section G-IV 5.17 Special Assessments and Lien**

The Board of Supervisors may order that the cost of abating nuisances pursuant to this Article, the administrative penalties, and the administrative costs and fees as confirmed by the Board be placed upon the County tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to Section 25845 of the Government Code; provided, however, that the cost of abatement, the administrative penalties, and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement liens to be recorded against the respective parcels of real property pursuant to Section 25845 of the Government Code.

**Section G-IV 5.18 Summary Abatement**

Notwithstanding any other provision of this Article, when any unlawful Marijuana Cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections G-IV 5.6 through G-IV 5.12 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the Enforcing Officer may direct any officer or employee of the County to summarily abate the nuisance as permitted by law. The Enforcing Officer shall make reasonable efforts to notify the persons identified in Section G-IV 5.7 but the formal notice and hearing procedures set forth in this Article shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections G-IV 5.13 through G-IV 5.17.

\* \* \* \*