

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE REGULATION OF
MEDICAL MARIJUANA CULTIVATION ADDING A NEW
ARTICLE TO THE MERCED COUNTY CODE**
(ADDS CHAPTER 9.29 TO TITLE 9 OF THE MERCED COUNTY CODE)

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

SECTION 1: Chapter 9.29 of Title 9 of the Merced County Code, for the “Medical Marijuana Cultivation” is added as follows:

**CHAPTER 9.29
MEDICAL MARIJUANA CULTIVATION**

- 9.29.010 Findings.
- 9.29.020 Purpose and Intent.
- 9.29.030 Relationship to Other Laws.
- 9.29.040 Definitions.
- 9.29.050 Medical Marijuana Cultivation Prohibited.
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- 9.29.080 Abatement.
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9.29.010 Findings.

The Board of Supervisors of the County of Merced finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the “Compassionate Use Act of 1996”).

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. This Chapter is intended to be consistent with Proposition 215 and subsequent state statutes.

C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the “Medical Marijuana Program Act”) to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.

D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of Medical Marijuana Collectives.

E. As recognized by the California 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 littering or crime against persons or property.

F. This ordinance is enacted, consistent with California Health and Safety Code section 11362.7 et seq., to protect the public health, safety, and welfare of County of Merced residents in relation to the legal operation and location of medical marijuana collectives and the cultivation of medical marijuana. The ordinance is enacted to establish reasonable regulations which balance the needs of medical patients and their caregivers with the rest of the public and promote the health, safety, and welfare of citizens, residents, visitors and businesses of the County of Merced.

G. Medical marijuana collectives have been operating in the County of Merced for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Some of the individuals arrested would be disqualified from operating a dispensary based on reasonable standards relating to their criminal history

backgrounds. Other public entities have documented violence related to operation of medical marijuana collectives. Medical marijuana collectives and cultivations attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Marijuana cultivations have proliferated in the County of Merced resulting in numerous complaints by the public to the Sheriff and members of the Board of Supervisors of prevalent malodorous conditions and safety concerns.

H. Authorized searches of marijuana cultivations, claimed to be for medicinal purposes have revealed severe exploitation of workers, the avoidance of labor laws and the abuse of children. Notwithstanding the claim of many marijuana cultivations as being designed to assist authorized medical marijuana users, many cultivations have simply served as avenues for the exportation and distribution of marijuana for illegal use. Further, marijuana cultivations have been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the County of Merced and beyond. Unregulated medical marijuana cultivations are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance. All of these problems seem to worsen as the cultivations become larger. Marijuana grows have been found in Merced County to be of extraordinary size, measured in multiple acres or otherwise in quantity far in excess of what might be cultivated for medicinal use.

I. The federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about ½ pound, to 846 grams, or nearly two pounds. The “street value” of a single cannabis plant is substantial. Pound prices for domestically produced high grade cannabis sold illegally within Northern California can range from \$1,500 to \$3,000. A single marijuana plant can easily yield \$4,000 or more in salable marijuana. One pound can yield 908 doses.

J. Investigation of cultivations has revealed that some property owners claim not to know of large marijuana cultivations on their property or ignore cultivations, all to the prejudice of the people in the surrounding areas, and demonstrating the need for owner responsibility for activities on their properties.

K. Medical marijuana cultivation in the County of Merced poses an urgent and immediate threat to the public peace, health, and safety. Several medical marijuana cultivations, have recently emerged in the County of Merced which are very visible to the public, and easily accessible by the public, including children and youths. Some of these cultivations contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. During the current harvest, and each harvest and processing season, there is an immediate threat of violent crime due to the size, location, and monetary value of these mature medical marijuana cultivations.

L. According to the Merced County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, marijuana growers may go from county to county, based on how vigorously each locale may regulate grows, fostering large criminal enterprises and prepared to accept low risk in favor of large economic reward, all to the disadvantage of the health and welfare of the local population.

M. According to the Merced County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, medical marijuana cultivations create a

nuisance and threaten the safety and property of nearby land owners and their families. If medical marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.

N. Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.

O. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.

P. The County of Merced has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing access to medical marijuana for ill residents.

Q. The adverse effects from medical marijuana cultivations may increase as the crop continues to grow, thereby requiring quick action to protect the public.

R. Other counties in California have encountered similar problems from the unregulated medical marijuana grows and have attempted to regulate them by ordinances after their respective boards of supervisors found such action to be necessary. Investigations have revealed that some growers have come to this county because it does not have a regulation to deal with large grows. The Board of Supervisors accepts the Sheriff's recommendations that the ordinance hereby enacted can best accomplish the County of Merced's goals stated herein.

S. Nothing in this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the Act except as mandated by State law.

T. Nothing in this ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under State or Federal law.

9.29.020 Purpose and Intent.

It is the purpose and intent of this Chapter pursuant to California Government Code section 25123(d) to immediately prohibit and provide alternative enforcement and prevention mechanisms against the large-scale cultivation of medical marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens, residents and travelers through the County of Merced.

9.29.030 Relationship to Other Laws.

This Chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent

that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the Board that this Chapter shall be interpreted to be compatible and consistent with federal, state, and county enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this Chapter will supersede any other provisions of this code found to be in conflict.

9.29.040 Definitions.

For purposes of this Chapter, these words and phrases shall be defined as follows:

A. "County" means the County of Merced or the unincorporated area of the County of Merced as required by the context.

B. "Marijuana" shall have the same definition as in California Health and Safety Code section 11018 as it now reads or as amended.

C. "Medical Marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code sections 11362.7 et seq.

D. "Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

E. A "Medical Marijuana Collective" or "Dispensary" means any operation, including a store-front facility or structure, mobile facility, or delivery service, wherein medical marijuana is made available, sold, offered for sale, given, distributed, traded, cultivated for, or otherwise provided to primary caregivers, and qualified patients, as defined by this Chapter. A "Medical Marijuana Collective" or "Dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by code or applicable law: (i) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (ii) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (iii) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (iv) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; and (v) a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.7 et seq.

F. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.

G. "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.

H. "Person responsible" is each person, association, corporation, partnership, or business entity of any type who assisted, contributed to, caused, performed, directed, established, maintained, aided or abetted, or operated any prohibited cultivation and each person, association, corporation, partnership, or business entity whatsoever owning a property interest in any property on which the prohibited medical marijuana is cultivated, and knew, or in the exercise of reasonable care, would have known of a medical marijuana cultivation prohibited by this Chapter.

I. "Parcel" means a tract, parcel, plot or lot identified as an individual

Assessor's Parcel Number ("APN") issued by the Merced County Assessor.

J. "Days" as used herein mean calendar days, unless otherwise stated. "Business Days" means days that the County of Merced is open for regular business. A "furlough day" is a business day.

K. "Property" as used herein shall include real property, structures and the abutting half of the street, and/or alley, between the sidelines thereof as extended.

L. "Enforcing officer," as used in this Chapter, shall mean the director of Community and Economic Development, a building official, fire chief, sheriff, health officer or any of their designees, each of whom may enforce this Chapter. The inclusion of any official within this definition shall not disqualify any individual from serving on an Administrative Hearing Board unless the individual's department issued the order or notice of abatement.

M. "Year," as used in this Chapter, shall mean three-hundred and sixty-five (365) days.

9.29.050 Medical Marijuana Cultivation Prohibited.

A. Outdoor cultivation of medical marijuana is prohibited in all areas of the County. Indoor cultivation of medical marijuana is prohibited in all areas of the County.

B. This section shall not apply to cultivation of twelve (12) or fewer medical marijuana plants, mature or immature, on any parcel, as defined in this Chapter.

9.29.060 Prohibited Medical Marijuana Cultivation Declared a Public Nuisance.

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this Chapter, within the unincorporated parts of the County of Merced is declared to be a public nuisance and each person or responsible party is subject to abatement and administrative penalties under this Chapter.

9.29.070 Penalties for Violation.

A. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail, or a fine of one-thousand dollars (\$1,000), or both. Violators shall be subject to any other enforcement remedies available to the County under any applicable local, state or federal statute or pursuant to any other lawful power the County may possess.

B. Each day a violation is allowed to continue and every violation of the Chapter shall constitute a separate violation and shall be subject to all penalties and enforcement remedies.

C. In the event any civil suit or action is brought by the County to enforce the provisions of this Chapter, the person(s) responsible for such violation shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees and expert costs.

9.29.080 Abatement.

Sections 9.29.80 through 9.29.96 are enacted pursuant to Government Section 25845 and comply with California Health and Safety Code section 17980. The procedures set out in this Chapter may be used in addition to, or as an alternative to, any other abatement procedure and any other penalty or fine provided by law.

9.29.081 Investigation.

The Enforcing Officer, upon receipt of information leading him/her to believe that a public nuisance of the type specified in this Chapter exists upon private property in the unincorporated area of the county, shall make a reasonable investigation of the facts and if possible inspect the property to determine whether or not a public nuisance exists. Inspections may include photographing the conditions or obtaining samples or other physical evidence. If an owner, occupant or agent refuses permission to enter or inspect, the enforcing officer may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure sections 1822.50 through 1822.59.

9.29.082 Keeping Premises Free From Creating a Public Nuisance.

A. Every owner of property shall properly maintain their property in a manner such that it does not contain or become a public nuisance described by this Chapter and shall promptly abate any such public nuisance in accordance with this Chapter.

B. Violation of any provision of this Chapter shall subject the violator to criminal prosecution, abatement, administrative penalties, costs, and such other sanctions set forth in this Chapter and, without limitation, as otherwise provided by law.

9.29.083 Notice to Abate and Penalties for Unlawful Marijuana Cultivation.

Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any property within the unincorporated area of Merced County, he or she is authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a "Notice to Abate and Penalties for Unlawful Marijuana Cultivation."

9.29.084 Contents of Notice.

The notice set forth in 9.29.083 shall be in writing and shall:

A. 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.

B. 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.

C. Identify such property by reference to the assessor's parcel number.

D. State that unlawful marijuana cultivation exists on the property and that it has been determined by the enforcing officer to be a public nuisance described in this Chapter.

E. Describe the unlawful marijuana cultivation that exists and the actions required to abate it.

F. State that the owner or occupant is required to abate the unlawful marijuana cultivation within seventy two (72) hours after the date that said notice was served.

G. State the date of service.

H. State that the owner or occupant may, within ten (10) 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 before the Administrative Hearing Board to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance described by this Chapter, or to show other cause why those conditions should not be abated in accordance with the provisions of this Chapter.

I. State that, unless the owner or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Administrative Hearing Board, within the time prescribed in the notice, 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.

J. State that the notice may be sent to any person or entity identified in public records as claiming a property interest or lien on the property, including, but not limited to, financial institutions.

K. If sought by the notice, state the amount of the administrative penalty imposed by the enforcing officer pursuant to this Chapter, and that the amount may continue to accrue;

L. If sought by the notice, state how, where, to whom, and within what number of days the administrative penalty must be paid;

M. If sought by the notice, state that the administrative penalty will be effective if the violation is not corrected within ten (10) days after service of the notice, and stating the effective date;

N. Generally state appellate or hearing rights;

O. Refer the recipient to this ordinance for further information; and,

P. Bear the signature of the enforcing officer issuing the notice along with the date of issuance.

9.29.085 Service of Notice.

A. The notice set forth in section 9.29.083 shall be served by delivering it personally to the owner and to the occupant, as well as each person sought to be held responsible, or by mailing it by regular United States mail, together with a certificate of mailing, to the occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that:

1. If the records of the county assessor show that the ownership has changed since the last equalized assessment roll was completed, the notice shall also be mailed to the new owner at his or her address as it appears in said records; or

2. In the event that, after reasonable effort, the enforcing officer is unable to serve the notice as set above, service shall be accomplished by posting a copy of the notice on the real property upon which the nuisance exists as follows: Copies of the notice shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two copies of the order be posted on a property pursuant to this section.

B. The date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable.

9.29.086 Administrative Appeal and Delegation

A. Any person upon whom a notice to abate unlawful marijuana cultivation has been served may appeal the determination of the enforcing officer that the conditions set forth in the notice constitute a public nuisance described by this section and should be abated in accordance with the provisions of this Chapter to the Board of Supervisors. Any such administrative appeal shall be commenced by filing a written request for a hearing with the clerk of the Board of Supervisors within ten (10) days after the date that said notice was served. If the tenth day falls on a non-business day, the time to request the hearing shall be extended to the next business day. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcing officer contained in the notice shall become final and conclusive on the eleventh day following service of the notice.

B. In his or her discretion, the enforcing officer may, within ten (10) days after the notice was served, request a hearing before the Board of Supervisors or the Administrative Hearing Board to determine whether or not the conditions should be abated in accordance with the provisions of this Chapter.

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 seven (7) business days nor more than fourteen (14) business days from the date the request was filed. The clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the notice was served, and to the enforcing officer. A failure to set a hearing date within this time period is not jurisdictional.

D. The Board of Supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice to abate unlawful marijuana cultivation. The Board of Supervisors shall issue a written decision in the form of a resolution, which shall include general 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.

E. Unless jurisdiction over a specific incidence of nuisance is withdrawn to itself by the Board of Supervisors, at a meeting of the Board of Supervisors, the abatement hearings required by this Chapter and California Government Code section 25845(h) to be heard by the Board of Supervisors are hereby automatically delegated to an Administrative Hearing Board created by this Chapter.

1. Said Hearing Board is hereby created pursuant to California Government Code section 25845 (h) and shall be composed of three members selected by the County Executive Officer from an alphabetical roster composed of the Assistant County Executive Officer, department heads, and assistant department heads. The County Executive Officer may excuse a requesting potential board member from sitting on a particular board, for what he or she considers adequate cause. The County Executive Officer shall appoint one of

the members as the chair. The chair shall preside over the hearing and decide evidentiary issues and any requests for delays.

2. No individual shall sit on the Administrative Hearing Board reviewing an enforcing officer's Notice to Abate and Penalties for Unlawful Marijuana Cultivation issued by his or her department. Neither shall the District Attorney, the Public Defender, the County Counsel, or any of their assistant department heads sit on the Administrative Hearing Board. The employment, performance, evaluation, compensation and benefits of the members of the Administrative Hearing Board, and its legal advisor, shall not be directly or indirectly conditioned on or in any way related to the results or prior decisions issued by any Administrative Hearing Board on which the member has participated.

3. The Administrative Hearing Board shall not determine the legality of this Chapter or legality of the enforcement procedures used. It shall determine if the enforcing officer's decision conforms with this Chapter and is supported by a preponderance of the evidence presented by the enforcing officer or his or her department. The hearing shall be recorded by tape recording or by the services of a certified court reporter. The record and photographic evidence shall be preserved for three years.

4. The County Counsel shall appoint a deputy county counsel solely to impartially advise, and not serve as an advocate before, the Administrative Hearing Board. He or she shall not be the usual legal advisor to the department of the enforcing officer.

5. Any hearing conducted pursuant to this Chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant sworn 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 chair of the Administrative Hearing Board has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

6. The written findings and recommendations of the Administrative Hearing Board shall be referred to the Board of Supervisors within five (5) days of the conclusion of the hearing. The Board of Supervisors may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the Board of Supervisors. No specific form is required for the findings and recommendations, which need only be generally stated. Written notice of the Administrative Hearing Board's findings and recommendations shall be mailed to the owner and the occupants of the property at the last known addresses and posted on the property.

F. The decision of the Board of Supervisors, which shall be by resolution, shall be final and conclusive. A failure to appeal the enforcing officer's determination that a public nuisance exists will constitute a failure to exhaust administrative remedies by the responsible person(s), unless the enforcing officer proceeds in accordance with section 9.29.086 B.

9.29.087 Liability for Costs.

A. In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful medical marijuana cultivation to exist shall be liable for all actual costs incurred by the county, including, but not limited to, actual administrative costs, and any and all actual costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Chapter, whether those costs are incurred prior to, during, or following enactment of this Chapter;

B. In any action by the enforcing officer to abate unlawful medical marijuana cultivation under this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the county elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.

9.29.088 Abatement by Owner or Occupant.

Any owner or occupant may abate the unlawful medical 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.

9.29.089 Enforcement.

A. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful medical marijuana cultivation within fourteen (14) days of the date of service of the notice of unlawful marijuana cultivation, unless timely appealed, or of the date of the decision of the Board of Supervisors 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.; and/or,
2. Take the action referenced in section 9.29.086 B; and/or,
3. Request that the county counsel commence a civil action to redress, enjoin, and abate the public nuisance.

9.29.090 Accounting.

A. The enforcing officer shall keep an account of the cost for each abatement carried out and shall provide a report in writing, itemized by parcel, to the clerk of the Board of Supervisors for the Board of Supervisors showing the cost of abatement and the actual administrative costs for each parcel to be considered by the Board of Supervisors.

B. Prior to providing the report to the Board of Supervisors as set forth in section 9.29.090 A, the enforcing officer, in his or her discretion, may provide a copy of the cost accounting to the person(s) sought to be held liable for payment. If paid, the enforcing officer need not forward the accounting to the Board of Supervisors. The enforcing officer need not wait for payment, but instead, may forward the accounting to the Board of Supervisors as set forth in section 9.29.090 A. Payment will constitute a waiver of all challenges to the costs so charged.

9.29.091 Notice of Hearing on Accounting; Waiver by Payment.

Upon receipt of the account of the enforcing officer, the clerk of the Board of Supervisors 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 ten (10) business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the enforcing officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

9.29.092 Hearing on Accounting.

A. At the time fixed, the Board of Supervisors shall meet to review the accounting of the enforcing officer. An owner of the affected property may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed to ensure only the actual costs are charged.

B. The report of the enforcing officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.

9.29.093 Modifications.

The Board of Supervisors shall make such modifications in the accounting as it deems necessary and appropriate and thereafter shall confirm the report by resolution.

9.29.094 Special Assessment and Lien.

The Board of Supervisors may order that the cost of abating nuisances pursuant to this Chapter and the administrative costs as confirmed by the Board of Supervisors 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 California Government Code section 25845, provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to section 25845 of the Government Code.

9.29.095 Enforcement by Civil Action.

As an alternative to the procedures set forth in Sections 9.29.083 through 9.29.094, the county may abate the violation of this Chapter by the prosecution of a civil action through the office of the county counsel, or through other counsel permitted by law, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

9.29.096 Summary Abatement.

Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Sections 9.29.083 through 9.29.086 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in section 9.29.085, but the formal notice and hearing procedures set forth in this Chapter shall not apply. The county may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 9.29.090 through 9.29.094.

9.29.100 Administrative Penalty and Purposes.

Sections 9.29.100 through 9.29.108 provide administrative penalties for violation of this Chapter and is enacted pursuant to California Government Code section 53069.4. The procedures of these sections serve the following purposes to effect the purposes and intents of this Chapter 9:

- A. To provide a method to penalize responsible parties who fail or refuse to comply with this Chapter; and
- B. To minimize the expense and delay where otherwise the County must pursue responsible parties in the civil or criminal justice system.
- C. The procedures regarding administrative penalties shall be in addition to criminal, civil or any other legal remedy established by law and available to address violations of this Chapter.

9.29.101 Administrative Penalty.

- A. Any responsible party violating any provision of this Chapter may be issued a notice of administrative penalties by an enforcing officer or the Board of Supervisors in accordance with the provisions of this Chapter.
- B. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall result in penalties.
- C. The enforcing officer may also request the Board of Supervisors, pursuant to section 9.29.106, to impose an administrative penalty under this Chapter when, in the judgment of the enforcing officer, the amount of the administrative penalties prescribed in section 9.29.107 are not adequate in light of the totality of the circumstances, including, but not limited to, the size of the cultivation, the value of the cultivation, the number of parcels being cultivated by the responsible persons, whether or not there

have been specific adverse effects on the environment and whether or not the responsible persons are repeat violators.

D. The enforcing officer may issue a notice of penalties for a violation not committed in the officer's presence, if the officer has determined through investigation that the responsible party did commit or is otherwise responsible for the violation.

9.29.102 Procedures.

A. Notice of administrative penalties shall be issued and served as set forth in section 9.29.084 of this Chapter. The notice may be combined with the notice of abatement, or separately, in the discretion of the enforcing officer.

B. Failure of the enforcing officer to effect actual service on any responsible party as required in this section shall not invalidate any provisions of this Chapter, nor shall it relieve any responsible party from any duty or obligation required by the code.

C. Failure of any responsible party to receive such notice of administrative penalties shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by first class mail postage prepaid in the manner provided in this section shall be effective on the date of mailing.

9.29.103 Request for Appeal of Administrative Penalties.

A. A responsible person disputing the issuance of an administrative penalty may contest the administrative penalties by requesting a hearing, in writing, from the clerk of the Board of Supervisors within ten (10) days from the date of service of notice the enforcement officer seeks administrative penalties either in the Notice to Abate and Penalties for Unlawful Marijuana Cultivation, or otherwise. If the tenth day falls on a non-business day, the request must be filed by the next business day. The person requesting a hearing must, concurrent with the request, advance deposit of the full amount of the penalty. Any administrative penalty that has been deposited shall be refunded if it is determined, after a hearing, that the person or entity charged with the violation was not responsible for the violation or that there was no violation as charged in the administrative penalty notice. The time requirement for filing a request for hearing form shall be deemed jurisdictional and may not be waived.

B. The appeal will be heard by the Administrative Hearing Board established by section 9.29.086 E of this Chapter in accordance with the procedural rules set forth in that section. The Administrative Hearing Board shall not determine the legality of this Chapter or legality of the enforcement procedures used. It shall determine if the enforcing officer's decision conforms with this Chapter and is supported by a preponderance of the evidence presented by the enforcing officer or his or her department and whether or not the penalty is merited and consistent with the intent of this Chapter.

C. The appeal may be heard separately or concurrently with any hearing by the Administrative Hearing Board pursuant to section 9.29.086 of this Chapter.

D. If appealed to the Administrative Hearing Board, the decision of the Administrative Hearing Board shall be final. Notice of the Administrative Hearing Board's final decision shall be served by certified or registered mail on the affected persons. Payment will be due immediately.

9.29.104 Advance Deposit Hardship Waiver.

A. Any person who intends to request a hearing under section 9.29.103 and is financially unable to make the advance deposit as required in that section may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the head of the department issuing the administrative penalty notice concurrent with the request for hearing.

C. The requirement of depositing the full amount of the administrative penalties as described in section 9.29.103 shall be stayed unless and until the head of the enforcing department makes a determination not to issue the advance deposit hardship waiver.

D. The head of the enforcing department, or his or her delegee, may waive the requirement of an advance deposit and issue the waiver only if the person receiving the administrative penalty notice submits to the head of the enforcing department a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the head of the enforcing department, or his or her delegee, of the person's actual financial inability to deposit with the county the full amount of the penalty in advance of the hearing.

E. If the head of the enforcing department determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the county within ten (10) days of the date of the decision or thirty (30) days from the date of issuance of the administrative penalty notice, whichever is later.

F. The head of the enforcing department, or his or her delegee, shall issue a written decision generally explaining the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written decision shall be final.

G. The written decision of the head of the enforcing department shall be mailed to the person who applied for the advance deposit hardship waiver at the address provided in the application.

9.29.105 Right to Petition for Writ.

A. Pursuant to Section 1094.6 of the California Code of Civil Procedure, or any other applicable code, any person who has been named in a Notice to Abate and Penalties for Unlawful Marijuana Cultivation or any other administrative penalty notice imposed under this Chapter, may, following exhaustion of administrative remedies, seek judicial review of the order(s) by filing a petition for writ of mandate pursuant to law and within the time periods provided by law. The filing of a petition for writ of mandate to review the order(s) shall not stay any action specified in the order.

9.29.106 Board of Supervisors Hearing to Establish Civil Penalties.

A. The enforcing officer may request a hearing before the Board of Supervisors to consider imposing a civil penalty in an amount or at a time different than provided for in section 9.29.107. Notice of the hearing shall be sent by first class mail postage prepaid to the last known address of the persons to whom the penalty is to be imposed against.

B. The notice shall state the date, time and place of the hearing, which in no event shall be sooner than ten (10) days from the date of mailing and posting such notice unless mutually agreed to by the property owner or responsible party and the

enforcing officer, the specific violations, conditions, or uses which constitute the code violation on which the penalty is based.

C. The failure of any property owner or responsible party to receive any notice required to be given or posted pursuant to the provisions of this Chapter shall not affect in any manner the validity of any proceedings taken hereunder.

D. At the time fixed in the notice, the Board of Supervisors shall proceed to hear testimony from any interested person regarding the specified violation, condition or use deemed by the enforcing officer to be the basis for the proposed administrative penalty, and any other matter which the Board of Supervisors may deem pertinent thereto.

E. Upon the conclusion of the hearing the Board of Supervisors will make a determination based on the evidence presented at the hearing, and may impose a civil penalty without regard to the limits in section 9.29.107, which shall thereafter be collected pursuant to this Chapter.

F. The decision of the Board of Supervisors shall be final and the administrative penalty payable immediately.

9.29.107 Amount of Administrative Penalty.

A. Administrative penalties for the violation of this Chapter shall be assessed as follows: a fine not exceeding two hundred fifty dollars (\$250.00) for the first violation; a fine not exceeding five hundred dollars (\$500.00) for the second violation of the same ordinance within one year from the date of the first violation; and a fine not exceeding one thousand dollars (\$1,000.00) for each additional violation of the same ordinance within one year from the date of the first violation.

B. Unless otherwise specified, the administrative penalty shall be due immediately.

C. Where the administrative penalty notice is issued for a continuing violation, unless the violation creates an immediate danger to health or safety, the responsible party shall be provided with an opportunity to correct the violation prior to the imposition of the administrative penalty in accordance with the following:

1. If a responsible party fails to correct any violation within thirty (30) days after the administrative penalty notice is served under section 9.29.102, the administrative penalty established by the administrative penalty notice shall become effective and due immediately.

2. The administrative penalty, or any portion thereof, for a first-time violation which has become effective following the thirty (30) day corrective period may be waived by the enforcing officer in his sole discretion only if the responsible party corrects the violation in accordance with all conditions established by the enforcing officer.

C. Neither imposition nor payment of an administrative penalty shall relieve the responsible party from his/her obligation to correct the violation, nor shall it bar further enforcement action by the enforcing officer.

9.29.108 Payment and Collection.

A. In the event the responsible party fails to pay the administrative penalty when due, the county may take any actions permitted by law or ordinance to collect the

unpaid penalty, which shall accrue interest at a rate of ten percent (10%) per month, commencing thirty (30) days after the administrative penalty becomes due and continuing until paid.

B. In the event a civil action is commenced to collect the administrative penalty, the county shall be entitled to recover all costs associated with the enforcement, investigation, establishment and collection of the penalty. Costs include, but are not limited to, staff time and costs incurred in the enforcement, investigation, establishment and the collection or processing of the penalty and those costs set forth in California Code of Civil Procedures Sections 685.010 et seq. and 1033.5.

C. The amount of any unpaid administrative penalty, plus any other costs as provided in this Chapter, may be declared a lien on real property owned by the responsible party within the county as follows:

1. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be mailed first class mail postage prepaid to the last known address; and

2. When the enforcing officer records a lien listing delinquent unpaid administrative penalties with the county recorder's office, the lien shall specify the amount of the lien, the date of the code violations, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name of the owner of the parcel according to the last equalized assessment roll; and

D. The amount of the unpaid administrative penalty, plus any other costs as provided by this Chapter, may be declared a special assessment against any real property owned by the responsible party and located within the county. The Board of Supervisors may impose the special assessment on one (1) or more parcels. The amount of the assessment shall not exceed the amount of administrative penalty imposed for the violation, plus any cost authorized by other Chapters of this code. The enforcing officer may present a resolution to the Board of Supervisors to declare a special assessment, and, upon passage and adoption thereof, shall cause a certified copy to be recorded with the Merced County Recorder's Office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary property taxes.

E. The county may withhold issuance of licenses, permits and other entitlement for any property whenever an administrative penalty resulting from a code violation on that property remains unpaid or the owner of the property has outstanding, unpaid administrative penalties for violations of the code.

F. The county may take any action permitted for enforcement of a civil money judgment pursuant to the Enforcement of Law, California Code of Civil Procedure Section 680.010 et. seq.

9.29.200 Remedies Cumulative.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

9.29.201 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Merced any duty to issue a notice to abate unlawful marijuana cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County of Merced shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

9.29.202 Supplementation, Clarification or Modification of Procedural Rules for Hearings.

The Board of Supervisors may supplement, clarify or modify the procedural rules for any hearing herein, including but not limited to, the use of other hearing officers or boards, by resolution. In its sole discretion, the Board of Supervisors may also determine it will serve as the hearing authority to decide abatement, costs and administrative fines and penalties for any purported violation of this Chapter. Should it do so, its decision shall be final, subject only to such review by the courts as the law may allow. Should the Board of Supervisors decide to serve as the hearing authority for the purposes of taking evidence, the evidence may be taken consistent with the rules of section 9.29.086 of this Chapter.

SECTION 2: Severability.

If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

SECTION 3: Effective Date; Publication.

This Ordinance shall become effective and be in full force on and after thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in a newspaper of general circulation printed and published in the County of Merced, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California, at a regular meeting thereof held on the _____, day of _____ by the following vote:

SUPERVISORS

AYES:

NOES:

ABSENT:

Chairman, Board of Supervisors

ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO LEGAL FORM AND EFFECT:
MERCED COUNTY COUNSEL

BY: _____