

ORDINANCE NO. 1955

**AN ORDINANCE OF THE MERCED COUNTY CODE
RELATING TO CANNABIS**

(Repeals Ordinance No. 1830 and Merced County Code Chapter 6.70 and amends Ordinance No. 1910 and Merced County Code Chapter 9.29)

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

SECTION 1. Chapter 6.70, Title 6, "MEDICINAL MARIJUANA DISPENSARY BUSINESSES," of the Merced County Code is hereby repealed.

SECTION 2. Chapter 9.29, Title 9, "MEDICAL MARIJUANA CULTIVATION," of the Merced County Code is hereby repealed and replaced as follows:

Chapter 9.29

Cannabis

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9.29.010 Findings

A. In 1996, the voters of the State of California approved Proposition 215, entitled "The Compassionate Use Act of 1996" ("Compassionate Use Act") (Health and Safety Code Sections 11362.5 *et seq.*

B. In 2004, the State enacted Senate Bill 420 entitled the "Medical Cannabis Program" (Health and Safety Code Sections 11362.7 *et seq.*) to clarify the scope of the Compassionate Use Act and to allow public entities to adopt and enforce rules and regulations consistent with Senate Bill 420.

C. In 2011, Assembly Bill 2650 (Health and Safety Code Section 11362.768) was enacted. This law affirms that counties may adopt policies and ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives.

D. In 2015, the State enacted the Medical Cannabis Regulation and Safety Act.

("MCRSA") (Business and Professions Code Sections 19300 *et seq.*). MCRSA consisted of three bills: Assembly Bill 243, Assembly Bill 266 and Senate Bill 643. The purpose of MCRSA is to regulate the cultivation, dispensing, manufacturing, delivery and transportation of medical cannabis.

E. California's medical cannabis laws do not limit or supersede existing local authority, including the authority to prohibit the cultivation, dispensing, manufacturing, distribution, and transportation of medical cannabis within the County.

F. In 2016, the voters of the State of California approved Proposition 64 enacting the Control, Regulate, and Tax Adult Use of Cannabis Act ("the AUMA") (Health and Safety Code Sections 11362.1 *et seq.* and Business and Professions Code Sections 2600 *et seq.*). The AUMA legalizes and regulates nonmedical cannabis under California law.

G. In 2017, in Senate Bill 94 the State enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA.

H. Like California's medical cannabis laws and AUMA, MAUCRSA recognizes and preserves the authority of local jurisdictions to enact and enforce reasonable regulations on the cultivation, possession, and consumption of cannabis. Under MAUCRSA, a local jurisdiction may prohibit commercial cannabis activity, may ban the outdoor cultivation of cannabis, and may impose reasonable regulations on the indoor cultivation of cannabis for personal use.

I. Experience in Merced County shows that local regulation of cannabis is necessary to address the current and immediate threat to the public health, safety, and welfare from unregulated medical and nonmedical cultivation, manufacturing, distribution and deliveries.

J. Several California cities and counties have experienced serious adverse impacts associated with and resulting from cannabis businesses, including dispensaries, delivery services and cultivation sites. Harmful effects include burglaries, robberies, illegal sales and illegal distribution of cannabis, use or possession of

cannabis by unauthorized persons, attacks on persons entering or leaving premises, loitering, smoking cannabis in public places, and offensive odors.

K. The cultivation of cannabis outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Cultivation of cannabis outdoors increases the likelihood of offensive odors traveling off the premises. Additionally, experience in Merced County and elsewhere demonstrates that outdoor cultivation of cannabis is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health, safety, and welfare. Given the identified negative impacts associated with outdoor cultivation, it is proper and necessary to prohibit the outdoor cultivation of cannabis to protect the public health, safety and welfare within the unincorporated area of Merced County.

L. The unregulated indoor cultivation of cannabis has potential adverse effects to the structural integrity of a building, and the use of high wattage grow lights and excessive use of electricity increase the risk of fire, which presents a clear danger to the building and its occupants.

M. Allowing for the delivery of medical cannabis from licensed retailers located outside the unincorporated area to qualified patients located within the unincorporated area would be the least onerous method of affording access of medical cannabis to qualified patients and caregivers within the County.

N. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Cannabis Grown for Medical Cannabis Use recognizes that the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

9.29.020 Purpose and Intent

A. It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation, selling, distributing, dispensing, manufacturing or testing of cannabis in a manner consistent with State law and which balances the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Merced. This Chapter is intended to be consistent with California's medical cannabis laws, the Adult Use of Cannabis Act, and MAUCRSA, and represents an exercise of the local authority retained by the County of Merced under those laws.

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 the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply. All citations to State law shall refer to the act, statute, or regulations as may be amended from time to time.

A. "Cannabis" shall have the meaning set forth in Business and Professions Code section 26001.

B. "Collective" or "Cooperative" means any association, cooperative, affiliation, group, or collective of persons organized or associated to cultivate, store and/or dispense cannabis for medical purposes pursuant to the CUA or MMP and as provided in Health and Safety Code section 11362.775.

C. "Cultivation" shall have the same meaning as that set forth in Business and Professions Code section and 26001, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

D. "Dispensary" means any facility, location, establishment or similar entity that cultivates, distributes, delivers, supplies or processes cannabis for medical purposes relating to a qualified patient or primary caregiver, pursuant to the CUA and MMP in accordance with Health and Safety Code sections 11362.5 et seq. A dispensary shall include a dispensing collective or cooperative.

E. "Fully enclosed and secure structure" means a space within a building that complies with the California Building Code, as adopted by the County, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two-inch by four-inch nominal or thicker studs overlain with three-eighths-inch or thicker plywood or equivalent materials. The cultivation of cannabis which occurs in a greenhouse, hoop house, or similar structure is considered "outdoor" cultivation for purposes of this chapter.

F. "Industrial Hemp" shall have the meaning forth in Health and Safety Code section 11018.5.

G. "Indoors" means within a fully enclosed and secure structure as defined herein.

H. "Marijuana" shall have the same meaning as "cannabis" set forth above.

I. "Outdoors" means any location that is not within a fully enclosed and secure structure as defined herein.

J. "Primary caregiver" shall have the meaning set forth in Health and Safety Code section 11362.7(d).

K. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, and as provided in Health and Safety Code section 11362.2.

L. "Qualified Patient" shall have the meaning set forth in Health and Safety Code section 11362.7(f).

M. "Commercial cannabis activity" includes all commercial activities set forth in Business and Professions Code section 26001, subdivision (k), and includes, but is not limited to, the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, or sale of cannabis and cannabis products.

N. "Retailer" means a business established for the retail sale and delivery of cannabis for medical or recreational use or such cannabis products to customers.

9.29.050 Prohibition of Commercial Cannabis Activity

A. Unless specifically allowed under subdivision B of this section, commercial cannabis activity, to the fullest extent permitted under State law, is prohibited and declared unlawful and a public nuisance in all zoning districts and all of the unincorporated territory of the County. The approval of any application for a State license issued under Division 10 of the Business and Professions Code violates the County's prohibition of commercial cannabis activity.

B. *Deliveries from M-Type 10, medical retailer licensees, located outside the unincorporated areas of Merced County.*

Exempt from the ban on commercial cannabis activity set forth in subdivision "A" above, the delivery of medical cannabis to qualified patients or primary caregivers within the unincorporated areas of Merced County provided all of the following requirements are met:

1. Only M-Type 10 licensed retailers, as set forth in Division 10 of the Business and Professions Code, whose licensed premise is located outside the unincorporated areas of Merced County, who possess a valid and current State retailer license that has been designated for commercial medicinal cannabis activity and are operating in compliance with the applicable laws and regulations of the local jurisdiction in which the licensed retailer is physically located shall be allowed to provide medical cannabis delivery to a qualified patient or primary caregiver in the unincorporated areas of Merced County; and
2. Prior to commencing cannabis deliveries to qualified patients or primary caregivers in the unincorporated areas of Merced County, a licensed retailer shall register with the County of Merced Sheriff's Department and provide proof acceptable to the Sheriff's Department that the retailer is licensed under the applicable laws of the State of California and operating in compliance with the applicable laws and regulations of the local jurisdiction in which the cannabis dispensary is located; and
3. Prior to commencing medical cannabis deliveries to qualified patients or primary caregivers in the unincorporated areas of Merced County, a licensed retailer shall provide the Sheriff's Department with the names, ages and driver's license numbers of all persons who will be conducting the deliveries. The licensed retailer shall notify the Sheriff's Department of any changes in the identities of the

persons conducting the deliveries within twenty-four (24) hours of any change in that information; and

4. Thereafter, on an annual basis and prior to July 1 of each year, the licensed retailer shall provide the Sheriff's Department with proof that the licensed retailer continues to be licensed under the applicable laws of the State of California and is authorized to operate in the local jurisdiction in which the licensed retailer is located. In addition to this annual reporting requirement, the licensed retailer shall promptly report any thefts of cannabis or money related to the delivery of cannabis in Merced County to the Merced County Sheriff's Department; and

5. Prior to commencing cannabis deliveries to qualified patients or primary caregivers in the unincorporated areas of Merced County, a licensed retailer shall obtain, and adhere to the conditions imposed on, a business license to operate in Merced County as required under Title 6, Chapter 6.02 of the Merced County Code.

C. This ordinance shall not be construed to prevent the transportation of cannabis or cannabis products on public roads by a licensee transporting cannabis or cannabis products in compliance with state law.

9.29.060 Personal Cultivation Restrictions

A. The personal cultivation of cannabis in the unincorporated area of Merced County shall be limited to a maximum of six (6) cannabis plants, whether immature or mature. Such cultivation shall be in compliance with State law and all of the requirements set forth below:

1. The cultivation occurs either: 1) within a single private residence; or 2) inside a fully enclosed and secure structure located upon the grounds of a private residence. Outdoor cultivation of any type, on any parcel is prohibited. Cultivation for commercial use is also prohibited.

2. The cultivation is contained within a fully enclosed structure secured by lock and key or other security device which prevents unauthorized entry and is inaccessible to minors.

3. The cultivation areas are not visible from the public right of way.

4. The cultivation areas, including any lighting, plumbing, or electrical components used, comply with Title 16 (Building and Construction) of this Code. The cultivation areas must be properly ventilated so as not create humidity, mold, or other related problems. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) or CO₂ and ozone generators for cannabis cultivation is prohibited.

5. Cultivation is not conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, vibration, or other effect that is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.

6. The primary use of the property remains at all times as a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. No room shall be used for cannabis cultivation where such

cultivation will impair or prevent the primary uses of cooking of meals, sleeping, and sanitation.

7. Written consent of the property owner is obtained prior to any cultivation commencing. Said consent must be evidenced by a signed and notarized statement from the property owner permitting cultivation on the affected parcel.

8. The cannabis plants, and all cannabis produced by the plants, shall be for the personal use of the cultivator only, and not for sale, provided that such cannabis and cannabis plants may be given away to persons 21 years of age or older without any compensation whatsoever in accordance with Health and Safety Code section 11362.1, subdivision (a)(2).

B. The personal cultivation of cannabis that is not in strict compliance with the requirements of this chapter is hereby declared unlawful and a public nuisance subject to enforcement and penalties under State law and as set forth in this chapter.

C. Nothing in this section shall prohibit the indoor cultivation of cannabis that is otherwise lawful under Health and Safety Code sections 11362.5 and 11362.7 et seq.

9.29.070 Administration

The Sheriff, or the Sheriff's designee and/or the Director of Community and Economic Development, or the Director's designee, are charged with the responsibility of administering this chapter and exercising the authority conferred thereby.

9.29.080 Abatement

Sections 9.29.080 through 9.29.096 are enacted pursuant to Government Code 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 or 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 Cannabis 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 owners(s) and/or occupants of the property, through issuance of a “notice to abate and penalties for unlawful cannabis cultivation.”

9.29.084 Contents of Notice

The notice set forth in Section 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 cannabis 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 cannabis cultivation that exists and the actions required to abate it.

F. State that the owner or occupant is required to abate the unlawful cannabis 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 cannabis

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 chapter for further information.

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 nonoccupying 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 cannabis 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 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. 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 cannabis 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 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.

E. 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 subsection B of this section.

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 cannabis 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 cannabis 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 attorneys' fees incurred. Recovery of attorneys' fees under this subsection 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 attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' 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 cannabis 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

Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful cannabis cultivation within fourteen (14) days of the date of service of the notice to abate unlawful cannabis 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:

- A. 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
- B. Take the action referenced in Section 9.29.086(B); and/or
- C. 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 subsection 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 subsection 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 cannabis 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:

- 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.

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 cannabis 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 designee, 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 designee 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 designee, 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

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 cannabis 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 or her sole discretion only if the responsible party corrects the violation in accordance with all conditions established by the enforcing officer.

D. Neither imposition nor payment of an administrative penalty shall relieve the responsible party from his or 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 (10) percent 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.

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 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 Criminal Penalty

All violations of this chapter are subject to punishment under the applicable punishments and penalties prescribed under State law. Further, all violations of this Chapter are deemed a misdemeanor and subject to the punishments and penalties set forth in Chapter 1.28 of this Code. Notwithstanding the foregoing, this Chapter does not authorize a criminal prosecution, arrest, or penalty inconsistent with or prohibited by Health and Safety Code sections 11362.5 and 11362.7 et seq.

SECTION 3. CEQA

The Board of Supervisors finds pursuant to Title 14 of the California Code of Regulations, section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 4. Validity

If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Board of Supervisors hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, words, or phrases be declared invalid or unconstitutional.

SECTION 5. Enactment

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Merced.

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 14th day of November, 2017, by the following vote:

SUPERVISORS

AYES: Daron McDaniel, Lloyd Pareira, Jerry O'Banion

NOES: Rodrigo Espinoza

ABSENT: Lee Lor

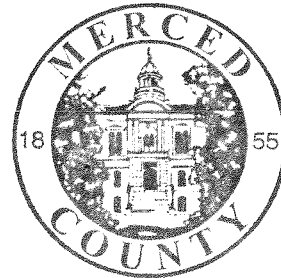


Chairman, Board of Supervisors


ATTEST:

JAMES L. BROWN
Clerk of the Board of Supervisors

By:  _____
Deputy



APPROVED AS TO LEGAL FORM AND EFFECT:
MERCED COUNTY COUNSEL

By:  _____
Deputy
James N. Fincher