Sierra County Board of Supervisors' Agenda Transmittal & Record of Proceedings

MEETING DATE: September 6, 2016	**TYPE OF AGENDA ITEM:** ☒Regular ☐Timed ☐Consent

DEPARTMENT: Board of Supervisors
APPROVING PARTY: Heather Foster, Clerk of the Board
PHONE NUMBER: 530-289-3295

AGENDA ITEM: Continued appeal of Notice to Abate Unlawful Marijuana Cultivation filed by Mr. Lester Strohbin, APNs 004-090-021 and 004-090-023.

SUPPORTIVE DOCUMENTS ATTACHED: ☐Memo ☐Resolution ☐Agreement ☒Other
See attached Notice to Abate, Notice of Appeal, Sierra County Code Section 8.01.80, Ordinance 1055

BACKGROUND INFORMATION:

FUNDING SOURCE:
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND:
AMOUNT: $ N/A

ARE ADDITIONAL PERSONNEL REQUIRED? ☐Yes, -- -- ☒No	**IS THIS ITEM ALLOCATED IN THE BUDGET?** ☐Yes ☒No **IS A BUDGET TRANSFER REQUIRED?** ☐Yes ☒No

SPACE BELOW FOR CLERK'S USE

BOARD ACTION: ☐Approved ☐Approved as amended ☐Adopted ☐Adopted as amended ☐Denied ☐Other ☐No Action Taken	☐Set public hearing For: _____ ☐Direction to: _____ ☐Referred to: _____ ☐Continued to: _____ ☐Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: ☐By Consensus

COMMENTS:

_____ _____
CLERK TO THE BOARD DATE

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. (Ord. 1055, eff. 8/21/14)

8.01.080 Administrative Review

(a) Any person upon whom an 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 to the Board of Supervisors, or may show cause before the Board of Supervisors why those conditions should not be abated in accordance with the provisions of this chapter. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within ten calendar days after the date that said notice was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed 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) 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 days nor more than thirty 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.

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

(d) The Board of Supervisors may continue the administrative hearing from time to time.

(e) 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 which 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.

(f) The decision of the Board of Supervisors shall be final and conclusive. (Ord. 1055, eff. 8/21/14)

8.01.090 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 marijuana cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, costs incurred in

FILED
SIERRA COUNTY CLERK
JUL 28 2016
HEATHER FOSTER
BY: DEPUTY

NOTICE OF APPEAL

Sierra County Code Section 8.01.080

Appeal Hearing Body: Sierra County Board of Supervisors
P.O. Drawer D
Downieville, CA 95936

In the matter of the appeal of: Lester Eric Strohbin

1. Date Notice to Abate Unlawful Marijuana Cultivation served: July 17, 2016 {This is The day the came out

2. Specific reasons conditions should not be abated: I Live so far off the beaten path that I feel that I am not a public nuisance, I'm a good man and try to do the vary best at all time & thing's That I do. This year 2016 I worked vary hard to go by what my Supervisors layed out for me to follow. I have 10 cannibis plant for my self, and 10 cannibis plants for my Lady partner, I'm trying my best to set the right example

3. Supporting facts for appeal: Let it be known, that if it will make this ABATMENT go ~ disapear, I will cut every cannibis plant down
I've allready destroyed several cannibis medical plant on July 25th 2016, and also destroyed several medical cannibis plants in view of Mike Fisher, I allowed Det. Mike Fisher at my will to check anything & everything. I allowed open house for him to do his job.

A separate sheet may be attached if more space is needed to complete items 2 and 3 above.

Lester E. Strohbin
Signature

Lester E Strohbin
Print or type name

July 28, 2016
Date

Pursuant to Section 8.01.080 of the Sierra County Code the time within to appeal is as follows:
An administrative review shall be commenced by filing a written request for hearing with the clerk of the Board of Supervisors within 10 calendar days after the date that said notice was served.

RETURN THIS FORM TO:
Sierra County Clerk
P.O. Drawer D
Downieville, CA 95936

Tim Standley

Sheriff-Coroner
County of Sierra
State of California

100 Courthouse Square/PO Box 66
Downieville CA 95936
(530)289-3700 Fax (530) 289-3318

NOTICE TO ABATE UNLAWFUL MARIJUANA CULTIVATION

Pursuant to Sierra County Ordinance 1055 section 8.01.050

Property Owner(s): LESTER STROHBIN / GARY TEEL

Property Occupant(s): STEVEN HOULE, JAMES LINDERBERG, LESTER STROHBIN, ALAMETA LANGHORN

Property Address: 1 HENNESS PASS ROAD, CAMPTONVILLE 95922 (SIERRA CO.)

Sierra County Assessor Parcel Number (APN#): 004-090-021 + 004-090-023
80 / 50

On 7-19-16 it was determined that unlawful marijuana cultivation exists on the above premises and it has been determined by the enforcing officer to be a public nuisance. The following violation(s) are occurring:

- [x] **No lawful dwelling on the property.**
- [x] **Person cultivating marijuana does not reside on the property.**
- [ ] **In excess of 18 marijuana plants under cultivation per person.**
- [ ] **In excess of 72 marijuana plants under cultivation on the property.**
- [ ] **No notarized letter from the legal property owner authorizing tenant(s) to cultivate marijuana on file.**
- [ ] **Outdoor marijuana not properly enclosed by opaque fence and/or bushes and hedgerows.**
- [ ] **Marijuana under cultivation not properly set back from property boundaries.**

Other violation(s):

Action(s) required to abate unlawful marijuana cultivation: TWO DWELLINGS ON PROPERTY(S) NEED TO BE PERMITTED. 36 MARIJUANA PLANTS BEING CULTIVATED FOR WENDY LINDERBERG AND DANNY DAY IN VIOLATION DUE TO THEM NOT RESIDING ON PROPERTY. CARE GIVER DOES NOT APPLY. BOTH WILL NEED TO MOVE TO CULTIVATION PROPERTY.

Notice to owner and/or occupant listed above: You are required to abate the unlawful marijuana cultivation within (10) ten calendar days after this notice was served. You have the right to make a request in writing within the (10) ten calendar days to the Sierra County Clerk of the Board of Supervisors for a hearing to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated. Unless the owner or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within ten calendar days of the date of the service of the notice, the County will abate the nuisance. Additionally, abatement costs, including administrative costs, may be made a special charge added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

DEPUTY: DET. M. FISHER #4620 **DATE OF SERVICE** 7-19-16

SIERRA COUNTY

Clerk-Recorder
P.O. Drawer D
Downieville, California 95936
Telephone (530) 289-3295
Fax (530) 289-2830

Heather Foster
Clerk-Recorder

August 3, 2016

Mr. Lester Strohbin
P.O. Box 32
Goodyears Bar, CA 95944

RE: Appeal of Notice to Abate Unlawful Marijuana Cultivation

Dear Mr. Strohbin,

Your appeal of the Notice to Abate Unlawful Marijuana Cultivation will be held on Tuesday, August 16, 2016 at 1:30 p.m. The hearing will take place at the Loyalton Social Hall, Loyalton City Park, Loyalton, CA.

The appeal hearing shall be conducted pursuant to Section 8.01.080 of the Sierra County Code. Upon the conclusion of the hearing the Board of Supervisors shall issue a written decision which 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.

If you have additional information you wish to provide to the Board please either e-mail the information to my office at clerk-recorder@sierracounty.ca.gov no later than 4:00 p.m. on August 9, 2016 or bring eight (8) copies and an original to the meeting.

If you have any questions regarding your hearing please contact me.

Sincerely,

Heather Foster
County Clerk-Recorder

cc: Gary Teele
Detective Mike Fisher, Sierra County Sheriff's Office

Enclosure

PROOF OF SERVICE - C.C.P. 1013A, 2015.5

I, Heather Foster, declare that:

1. I am employed in the County of Sierra, California; I am over the age of eighteen years and not a party to the within cause; and my business address is:

100 Courthouse Square, Room 11
Downieville, CA 95936

2. I am readily familiar with the practice of the County of Sierra in the processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

3. On August 4, 2016, I served the following document(s)

NOTICE OF APPEAL HEARING
for Lester Strohbin

In said cause, on the following interested parties:

Lester Strohbin
P.O. Box 32
Goodyears Bar, CA 95944

X **BY U.S. POSTAL SERVICE (Mail):** I placed each such document in a sealed envelope addressed as noted above, with first-class mail postage thereon fully prepaid, for collection and mailing at Downieville, California, following the above-stated business practice, on this date.

BY PERSONAL SERVICE: I hand-delivered each such envelope to the address(es) listed on this date.

BY COURIER/MESSENGER SERVICE (Hand Delivery): I caused each such envelope to be delivered by hand to the address(es) listed above on this date.

BY FACSIMILIE: I caused said document(s) to be transmitted by facsimile machine to the parties at the numbers(s) indicated above on this date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 4, 2016 at Downieville, California.

Heather Foster, County Clerk/Recorder
County of Sierra, State of California

PROOF OF SERVICE - C.C.P. 1013A, 2015.5

I, Heather Foster, declare that:

1. I am employed in the County of Sierra, California; I am over the age of eighteen years and not a party to the within cause; and my business address is:

100 Courthouse Square, Room 11
Downieville, CA 95936

2. I am readily familiar with the practice of the County of Sierra in the processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

3. On August 4, 2016, I served the following document(s)

NOTICE OF APPEAL HEARING
for Lester Strohbin

In said cause, on the following interested parties:

Gary Teele
P.O. Box 32
Goodyears Bar, CA 95944

X **BY U.S. POSTAL SERVICE (Mail):** I placed each such document in a sealed envelope addressed as noted above, with first-class mail postage thereon fully prepaid, for collection and mailing at Downieville, California, following the above-stated business practice, on this date.

BY PERSONAL SERVICE: I hand-delivered each such envelope to the address(es) listed on this date.

BY COURIER/MESSENGER SERVICE (Hand Delivery): I caused each such envelope to be delivered by hand to the address(es) listed above on this date.

BY FACSIMILIE: I caused said document(s) to be transmitted by facsimile machine to the parties at the numbers(s) indicated above on this date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 4, 2016 at Downieville, California.

Heather Foster, County Clerk/Recorder
County of Sierra, State of California

ORIGINAL

Aug. 16, 2016 EXH. A.

Pg. 1

Attn: Honorable Boar of Supervisors

In response regarding my appeal, I would like to bring to your attention that I have lived in my home off the grid and out of the publics face for many year's. I've payed out approximately $60,000.00 dollar's in land and building tax, and of late have been re-assesed by Tessa Jackson on my home and am being charged, retroactive for four year's back

I am working very diligently to come into compliance, I've been working with Brandon Pangman of Sierra co. Planning Dept. and with his addvice hired a Mr. Ken Meffen, building and design engineer to inspect my home's.

May I also say that the cannabis plant's that were found out of compliance, because of Dr. recommendation for residence not liveing on this property have been destoryed (see pictures)

I would like to say that the small amount of cannabis plants that are now growing on this property, if destoryed well have a very serious effect on our heath, to stop us from useing our medical cannabis may result in heath issues that could become dangerous I myself have been under a Dr's medical cannabis care for over 20 year, my wife allso for 20 year's by allowing us not to have access to our cannabis could result to serious heath problems.

I use cannabis because there are few side effects, I've broken my neck in 3 places, my back in one place, I have frozen shoulder's and sever anxiety and heart problem's, I have 18% of my heart left, my wife has high blood presure, and extreme anxiety.

ORIGINAL

Incloseing I hope you will see that cannabis has been a medicine in our lives and is considered vital to our heath, and helps with my PTSD from Viet Nam.

with great respect to all of you
and friend

Lester E. Strohbin

Lester E. Strohbin
Gails Orchard Sierra Co. Calif.

BOARD OF SUPERVISORS
COUNTY OF SIERRA
STATE OF CALIFORNIA

ORDINANCE NO. 1055

An Ordinance Adding Chapter 8.01 to the Sierra County Code Pertaining to Cultivation of Marijuana

THE BOARD OF SUPERVISORS OF THE COUNTY OF SIERRA ORDAINS as follows:

Ordinance Section One:

Chapter 8.01 is hereby added to the Sierra County Code as follows:

CHAPTER 8.01 – MARIJUANA CULTIVATION
(Ordinance 1055)

8.01.010 Authority and title

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, and Government Code sections 25845 and 53069.4, the Board of Supervisors hereby enacts this Chapter, which shall be known and may be cited as the "Sierra County Marijuana Cultivation Ordinance."

8.01.020 Findings and purpose

The Board of Supervisors of the County of Sierra hereby finds and declares the following:

(a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996").

(b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

(c) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq., and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

(d) Health and Safety Code section 11362.83, both as originally enacted, and as amended by Assembly Bill 1300, further recognize that counties and cities may also adopt and enforce any other ordinances that are consistent with the Medical Marijuana Program.

(e) The courts in California have held that neither the Compassionate Use Act nor the Medical Marijuana Program grants anyone an unfettered right to cultivate marijuana for medical purposes or limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute. (See *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 and *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729.)

(f) Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Sierra County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

(g) Cultivation of any amount of marijuana at locations or premises within one hundred feet of schools creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

(h) As recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

(i) It is the purpose and intent of this chapter to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Sierra. This Chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in Sierra County.

(j) The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of Sierra County.

(k) Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this Chapter deemed a defense or immunity to any action brought against any person by the Sierra County District Attorney, the Attorney General of State of California, or the United States of America.

8.01.030 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

"Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

"Enforcing officer" means the health officer or the sheriff, or the authorized deputies or designees of either or any person employed by the County of Sierra and appointed to the position of code enforcement officer, each of whom is independently authorized to enforce this chapter.

"Indoor" or "Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Sierra, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and 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 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials.

"Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

"Marijuana plant" means any mature or immature marijuana plant, including without limitation, any marijuana seedling.

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

"Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

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

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

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

8.01.040 Conditions for Cultivation

(a) The cultivation of marijuana plants, either indoors and/or outdoors, on any premises in excess of the following limits on the number of plants and conditions set forth here, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter:

1. Each person that resides on the property in a lawfully constructed dwelling and who possess appropriate medical authorization for his or her use of marijuana may grow no more than 18 marijuana plants;

2. A person residing on the property in a lawfully constructed dwelling who as the primary caregiver for a person that possess the medical authorization for use of marijuana by a qualified patient may grow no more than 18 plants as to each such qualified patient;

3. In no event shall the number of marijuana plants being cultivated on any property exceed 72 plants.

(b) It is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter for marijuana to be grown on any premises except for the personal consumption of a qualified patient residing on the premises or, as provide above for the use of a qualified patient as to which the person residing on the premises is a primary caregiver.

(c) The cultivation of marijuana, in any amount or quantity outdoors, upon any premises located within one hundred feet of any school is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.

1. Except as provided in subdivision (c)(2), such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school is located.

2. If the premises is twenty acres or greater in size, then such distance shall be measured in a straight line from the building in which the marijuana is cultivated, or, if the marijuana is cultivated in an outdoor area, from the fence required by subdivision (d)(3), to the boundary line of the premises upon which school is located.

(d) The cultivation of marijuana either indoors or outdoors upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter, unless all of the following conditions are satisfied:

1. The person(s) cultivating marijuana on any legal parcel shall be the owner of and residing in a lawfully constructed structure on the property. However, if the person(s) cultivating the marijuana is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel, in which case the person(s) cultivating the marijuana must reside on the property in a lawfully constructed structure. The agency shall prescribe forms for such letters.

2. All marijuana grown outside of any building must be fully enclosed by an opaque fence at least six feet in height if the marijuana is visible from any location off of the property which contains the growing marijuana. Bushes and hedgerows, may constitute an adequate fence under this subdivision if sufficient to prevent a view of the marijuana.

3. Any outdoor area in which the marijuana is cultivated shall be set back at least ten feet from all boundaries of the premises.

   Such setback distance shall be measured in a straight line from the fence required by subdivision (d)(2), to the boundary line of the premises.

4. No lights may be used outdoors as part of the growing of marijuana. Lights used indoors shall comply with all applicable laws, including without limitation, restrictions on the use of lights or lighting that interferes with the use of any radio or other communication device.

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

8.01.045 Omitted

8.01.050 Notice to Abate Unlawful Marijuana Cultivation

Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any premises within the unincorporated area of Sierra 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 Unlawful Marijuana Cultivation."

8.01.060 Contents of Notice

The notice set forth in Section 8.01.050 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) Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the enforcing officer to be a public nuisance described in this chapter.

(e) Describe the unlawful marijuana cultivation that exists and the actions required to abate it.

(f) Contain a statement that the owner or occupant is required to abate the unlawful marijuana cultivation within ten calendar days after the date that said notice was served.

(g) Contain a statement that the owner or occupant may, within ten calendar days after the date that said notice was served, make a request in writing to the Clerk of the Board of Supervisors for a hearing to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this chapter.

(h) Contain a statement that, unless the owner or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within ten calendar days of the date of the service of the notice, the County will abate the nuisance. The notice shall also state that the abatement costs, including administrative costs, may be made a special charge added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

(i) State the applicable hearing fee, if such a fee has been established.

8.01.070 Service of Notice

(a) The notice set forth in Section 8.01.050 shall be served by delivering it personally to the owner and to the occupant, 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.

8.01.080 Administrative Review

(a) Any person upon whom an 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 to the Board of Supervisors, or may show cause before the Board of Supervisors why those conditions should not be abated in accordance with the provisions of this chapter. Any such administrative review shall be commenced by filing a written request for a hearing with the Clerk of the Board of Supervisors within ten calendar days after the date that said notice was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed 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) 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 days nor

more than thirty 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.

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

(d) The Board of Supervisors may continue the administrative hearing from time to time.

(e) 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 which 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.

(f) The decision of the Board of Supervisors shall be final and conclusive.

8.01.090 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 marijuana cultivation to exist shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, costs incurred in conducting an administrative hearing when an order for abatement is upheld but not in a case where the order for abatement is not sustained, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this 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 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 attorneys' fees incurred by the County in the action or proceeding.

8.01.100 Abatement by Owner or Occupant

Any owner or occupant may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the enforcing officer.

8.10.110 Enforcement

Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within ten days (1) of the date of service of the notice to unlawful

marijuana cultivation, unless timely appealed, or (2) 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. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the board of supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California; and/or

(b) Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.

8.01.120 Accounting

The enforcing officer shall keep an account of the cost of every abatement carried out and shall render a report in writing, itemized by parcel, to the Board of Supervisors showing the cost of abatement and the administrative costs for each parcel.

8.01.130 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.

8.01.140 Hearing on Accounting

(a) At the time fixed, the Board of Supervisors shall meet to review the report of the enforcing officer. An owner 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.

(b) The report of the enforcing officer shall be admitted into evidence. The owner shall bear the burden of proving that the costs shown and the accounting is not accurate and reasonable.

(c) The Board of Supervisors shall also determine whether or not the owner(s) had actual knowledge of the unlawful marijuana cultivation, or could have acquired such knowledge through the exercise of reasonable diligence. If it is determined at the hearing that the owner(s) did not have actual knowledge of the unlawful marijuana cultivation, and could not have acquired such knowledge through the exercise of reasonable diligence, costs for the abatement shall not be assessed against such parcel or otherwise attempted to be collected from the owner(s) of such parcel.

8.01.150 Modifications

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

8.01.160 Special Assessment/Charge and Lien

Pursuant to section 25845 of the Government Code, 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 be placed upon the County tax roll against the respective parcels of land, or placed on the unsecured roll; 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.

8.01.170 Administrative Civil Penalties

(a) In addition to any other remedy prescribed in this chapter, any nuisance as described in this chapter may be subject to an administrative penalty of up to one thousand dollars per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.

(b) Acts, omissions, or conditions in violation of this chapter that continue, exist, or occur on more than one day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the service date and the effective date are separate violations.

(c) In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the enforcing officer or the court shall provide for a reasonable period of time, not to exceed ten days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties.

(d) In determining the amount of the administrative penalty, the enforcing officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require.

(e) The enforcing officer may commence the administrative process by issuance of a notice of violation and proposed administrative penalty, which shall state the amount of the proposed administrative penalty and the reasons therefore. The notice of violation and proposed administrative penalty may be combined with a notice to abate unlawful marijuana cultivation issued pursuant to Section 8.01.050. The notice shall be served by certified mail addressed to all of the following: (i) the owner of the property on which the violation exists, at the address shown on the last equalized assessment roll or as otherwise known to the enforcing officer; (ii) anyone known to the enforcing officer to be in possession of the property subject to the notice, at the street address of the property; and (iii) any other person known to the enforcing officer who has caused, permitted, maintained, conducted, or otherwise suffered or allowed the violation to exist. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed upon any other person. The notice shall inform the

recipient of their right to request a hearing before the board of supervisors in accordance with this section. If such a hearing is not requested within ten days after issuance of the notice, the proposed penalty shall become final and conclusive, and the person to whom the notice was issued shall immediately make payment of the penalty amount to the County.

(f) If any person to whom the notice is issued requests a hearing before the Board of Supervisors, the person shall be notified by first class mail, postage prepaid, when the matter has been set for hearing. After the hearing, the Board may impose, modify, or disapprove, in whole or in part, by its own order, the proposed penalty set forth in the notice. The decision of the Board of Supervisors shall be final and conclusive. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in the Board of Supervisors order shall be made to the County within twenty (20) days of service of the order, unless timely appealed to the superior court in accordance with Government Code section 53069.4, subdivision (b).

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

(h) In addition to any other legal remedy, whenever the amount of any administrative penalty imposed pursuant to this section has not been satisfied in full within ninety days and has not been timely appealed to the superior court in accordance with Government Code section 53069.4, subdivision (b), or if appealed, such appeal has been dismissed or denied, this obligation may be enforced as a lien against the real property on which the violation occurred.

1. The lien provided herein shall have no force and effect until recorded with the County recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure section 697.340, and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220, inclusive.

2. Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.

3. Prior to recording any such lien, the enforcing officer shall prepare and file with the clerk of the board of supervisors a report stating the amounts due and owing.

4. The clerk of the board of supervisors will fix a time, date, and place for the board of supervisors to consider the report and any protests or objections to it.

5. The clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail is effective on the date of mailing and failure of owner to actually receive notice does not affect its validity.

6. Any person whose real property is subject to a lien pursuant to this section may file a written protest with the clerk of the Board of Supervisors and/or may protest orally at the board of supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

7. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.

8. Within thirty (30) days following the Board of Supervisors' adoption of a resolution imposing a lien, the Clerk of the Board of Supervisors will file same as a judgment lien in the Sierra County Recorder's Office.

9. Once the County receives full payment for outstanding principal, penalties, and costs, the Clerk of the Board of Supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Sierra County Recorder's Office. This notice of satisfaction will cancel the County's lien under this section.

10. The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. The prevailing party shall be entitled to its attorney's fees and costs.

(i) Administrative penalties imposed pursuant to this section shall also constitute a personal obligation of each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event that administrative penalties are imposed pursuant to this section on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the County may prosecute a civil action through the office of the County Counsel to collect any administrative penalty imposed pursuant to this section.

(j) Payment of administrative penalties under this section does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the notice of violation and proposed administrative penalty. The payment of administrative penalties does not bar the County from taking any other enforcement action regarding a violation that is not corrected.

8.01.180 Administrative Hearing Fees

(a) The Board of Supervisors may, by resolution, establish fees for hearings conducted under Sections 8.01.080 and 8.01.165.

(b) Failure to pay the hearing fee in a timely manner shall cause the appeal request to be automatically denied. Enforcement of the notice to abate unlawful marijuana cultivation and/or notice of violation and proposed administrative penalties, as applicable, may then proceed as if no request for hearing had been submitted.

(c) If the hearing fee is paid and the Board of Supervisors finds there is no nuisance as described in this chapter, the hearing fee shall be refunded to the person who paid the fee, without interest.

8.01.190 Enforcement by Civil Action

As an alternative to the procedures set forth in Sections 8.01.050 through 8.01.080, the County may abate the violation of this chapter by the prosecution of a civil action through the office of the County Counsel, 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.

8.01.200 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 8.01.050 through 8.01.080 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 8.01.070, 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 8.01.120 through 8.01.160. Any action to summarily abate under the provisions of this Section shall require that the enforcing officer, prior to the commencement of the abatement, prepare written findings of the grounds for such action and the exigencies supporting same which shall be reviewed and approved by District Attorney, as appropriate, prior to the abatement action.

8.01.210 No Duty to Enforce

Nothing in this chapter shall be construed as imposing on the enforcing officer or the County of Sierra any duty to issue an 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 Sierra 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.

8.01.220 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.

8.01.230 Other Nuisance

Nothing in this chapter shall be construed as a limitation on the County's authority to abate any nuisance which may otherwise exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

8.01.240 Severability

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

8.01.250 Misdemeanor Penalty

Any person violating any provision of this Chapter shall be guilty of a misdemeanor.

Ordinance Section Two:

This ordinance shall take effect thirty (30) days after its passage. Before expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 17th day of June, 2014, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 22nd day of July, 2014, by the following roll call vote, to wit:

AYES: Supervisors..Huebner, Beard,Schlefstein,Roen
NOES: None
ABSTAIN: None
ABSENT: Supervisor..Adams

COUNTY OF SIERRA

PAUL ROEN, CHAIR
BOARD OF SUPERVISORS

ATTEST:

HEATHER FOSTER
CLERK OF THE BOARD

APPROVED AS TO FORM:

JAMES A. CURTIS
COUNTY COUNSEL