

## ARTICLE 72

### SEC. 21-72 REGULATIONS FOR THE CULTIVATION OF MEDICAL MARIJUANA

#### 72.1 Findings and Purpose:

- (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.) 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.
- (d) Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420. The California Supreme Court reaffirmed the authority of local jurisdictions to regulate land uses in City of Riverside vs. Inland Empire Patients Health and Wellness Center, Inc.(56 Cal. 4<sup>th</sup> 729, 156 Cal. Rptr. 3d 409, 300 P. 3d 494 (3013))
- (e) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- (f) The County’s geographic and climatic conditions, along with the sparse population in many areas of the County provide conditions that are favorable to outdoor marijuana cultivation, and the County has experienced a significant increase in the number of people moving to the area seasonally to cultivate large

amounts of marijuana, often from other States. Marijuana growers can achieve a high per-plant yield because of the County's favorable growing conditions. With the use of custom soils and fertilizers, it is not uncommon for plants to grow to 12 feet in height, six feet in diameter and produce between two (2) and four (4) pounds of dried bud. These seasonal growers are unfamiliar with local and state regulations aimed at protecting the environment and are causing significant damage to area watersheds. Soils, fertilizers and rodenticides are commonly left behind as sites are abandoned for the winter.

- (g) 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 civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Lake County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of violent 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.
- (h) Cultivation of marijuana at locations or premises in close proximity of schools, churches, parks, child care centers, or youth oriented facilities 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.
- (i) According to local law enforcement officials, the amount of Marijuana cultivated in Lake County has been increasing significantly with each growing season and is increasingly occurring in residential areas, in close proximity to residences, and on vacant, unsupervised and unsecured properties. During the last two years, Lake County has experienced a dramatic increase in citizen complaints regarding the odor, threats to public safety and other nuisances that unregulated Cultivation sites can create.
- (j) Since state law does not consider medical marijuana an agricultural crop, there are no regulations governing the type or amounts of pesticides or fungicide used on marijuana plants. This poses a threat not only to the users of the marijuana, but to consumers of agricultural crops grown in proximity to the marijuana.

- (k) The unregulated use of pesticides, fungicides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water.
- (l) The cultivation of marijuana has the potential for increased crime, intimidation and threats. As marijuana plants mature, certain varieties produce a strong odor which creates an attractive nuisance by alerting people to the location of valuable marijuana plants; this creates an increased risk of crimes including burglary, trespassing, robbery and armed robbery. Law enforcement officials have reported an increase in calls from reported respiratory problems and allergic reactions to marijuana plants.
- (m) The amount of marijuana being cultivated in Lake County far exceeds the amount reasonably necessary to serve as medical marijuana for residents of the land where the cultivation occurs, or patients under the care of primary caregivers, and criminal operations are increasing. Lake County has experienced a significant increase in reported home invasion robberies, and it is believed that more incidents go unreported due to the criminal nature of many cultivation operations.
- (n) Marijuana that is cultivated indoors often results in excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire. In addition, many homes have suffered extensive damage due to unpermitted electrical, plumbing and mechanical modifications. These unsafe conditions are often caused by tenants.
- (o) 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.
- (p) Standards are necessary to protect adjacent property owners and residents who find the odor of mature marijuana plants offensive; standards are needed to limit incompatible uses on smaller lots and protect the public safety and welfare.
- (q) It is the purpose and intent of this Article 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 Lake. This Article 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 Article 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, welfare and environment in Lake County, and that is in conformance with the

provisions of California Health and Safety Code Section 11362.5 through 11362.83.

- (r) The limited right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Article, 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 Lake County.
- (s) Nothing in this Article 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 Article shall be deemed a defense or immunity to any action brought against any person by the Lake County District Attorney, the Attorney General of State of California, or the United States of America.

**72.2 Intent:** It is the intent of the Board of Supervisors to prohibit the large scale cultivation of marijuana used for non-medical purposes, while regulating the cultivation of limited amounts of marijuana for medical purposes to accommodate the needs of qualified patients and/or their caregivers, in order to protect Lake County’s unique and sensitive environment, and to preserve the public peace, health, safety and general welfare of the citizens of, and visitors to the County. It is also the intent of the Board of Supervisors that nothing in this Article shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance or to allow the use or diversion of marijuana for non-medical purposes.

**72.3 Applicability:** The provisions of this Article shall be applicable to all persons and businesses described herein whether the activities described herein were established before or after the effective date of this Article.

**72.4 Definitions:**

- (a) Cultivation: The germinating, cloning, seed production, planting, growing, and harvesting of cannabis plants and the on-site drying, curing, grading, or trimming of cannabis plants. **(Ord. No. 3068, 10/17/2017)**
- (b) Enforcement Official: As used in this Article, shall mean the Lake County Sheriff, Community Development Director, Building Official, Environmental Health Director, or any other official authorized to enforce local, state or federal laws.
- (c) Fence: means a wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials approved by the Community Development Department for the purpose of enclosing space or separating parcels of land. The term “fence” does not include retaining walls, plastic, tarp, bamboo coverings, corrugated metal, or other materials not designed or manufactured for use as a fence.

- (d) Indoor: means within a fully enclosed and secure structure that complies with the California Building Standards Code (Title 24 California Code of Regulations), as adopted by the County of Lake, 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 standard 2" × 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Cultivation within a greenhouse or “hoophouse” shall not be considered indoor cultivation.
- (e) 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).
- (f) Marijuana: shall have the same meaning as that set forth in California Health and Safety Code Section 11018.
- (g) Mature Plant: means a marijuana plant whose sex can be determined by visual inspection.
- (h) Medical Marijuana: means marijuana grown for qualified patients, persons with a valid doctor’s recommendation, and the designated primary caregivers of qualified patients for medical purposes, as provided in California Health and Safety Code Section 11362.5.
- (i) Medical Marijuana Collective: means Qualified Patients and/or designated Primary Caregivers of Qualified Patients, who associate, or form a cooperative in accordance with Section 12300 of the Corporations Code, within the unincorporated area of the County in order to collectively or cooperatively cultivate Marijuana for medical purposes, as provided in California Health and Safety Code Section 11362.775, as may be amended. The term collective shall include "cooperative" unless the context clearly indicates otherwise.
- (j) Outdoor Cultivation: Shall mean cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors. For purposes of this ordinance, cultivation within a greenhouse or “hoophouse” shall be considered outdoor cultivation.
- (k) Pesticides: Shall have the same meaning as set forth in Article 1, Division 6, Section 6000 of the California Code of Regulations, and Article 1, Division 7, Section 12753 of the California Food and Agriculture Code.
- (l) Primary Caregiver: Shall mean the individual designated by the patient who has consistently assumed responsibility for the housing, health, or safety of that person, and shall imply a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Proposition 215 and Senate Bill 420, and shall not merely provide qualified patient(s) with medical

marijuana. For purposes of this Article, the primary caregiver's primary place of residence shall be within Lake County.

- (m) Premises: A legal parcel compliant with the Subdivision Map Act, or leasehold interest in agricultural land for agricultural purposes of outdoor, mixed-light, or indoor cultivation or processing of cannabis, or leased or owned space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture or distribution of cannabis. **(Ord. No. 3068, 10/17/2017)**
- (n) Qualified Patient: Shall have the same definition as California Health and Safety Code Section 11362.7 (f), and whose primary place of residence is within Lake County.
- (o) Resident/Residency: The primary place of residence for persons engaging in the outdoor cultivation of medical marijuana shall be the premises on which the medical marijuana is cultivated. For collective cultivation as provided in Section 72.5(l), below, the premises on which the medical marijuana is cultivated shall be the principal primary residence of at least one of the persons for whom the medical marijuana is being cultivated.
- (p) Cultivation site: The sum of the area(s) of cannabis cultivation as measured around the perimeter of each discrete area of cannabis cultivation on a single premises, as defined herein. **(Ord. No. 3068, 10/17/2017)**

#### **72.5 Outdoor Cultivation Limits and Environmental Standards:**

- (a) Cultivation on vacant properties is prohibited. Cultivation is an accessory use to an existing, permitted residential use of a legal parcel, and the qualifying patient or primary caregiver engaged in the cultivation must reside at the site.
- (b) Outdoor cultivation, including cultivation within greenhouses or "hoop houses" is prohibited on any parcel that is located within a Community Growth Boundary as designated by the Lake County General Plan, and on any parcel that is one (1) acre or smaller and located outside of any designated Community Growth Boundary.
- (c) Outdoor cultivation by qualified patients and primary caregivers, whether conducted outside or within a greenhouse or "hoop house" shall not exceed 6 mature or 12 immature plants on parcels larger than 1.00 acre. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation, unless cultivation is conducted in accordance with the provisions of Section 72.5(l), below.
- (d) Outdoor cultivation shall not be conducted within 1,000 feet of any public or private elementary, middle or high school, developed park containing playground equipment, drug or alcohol rehabilitation facility, child care facility or nursery school, church or youth-oriented facility such as any establishment that advertises in a manner that identifies the establishment as catering to or providing services

primarily intended for minors, or if the individuals who regularly patronize, congregate or assemble at the establishment are predominately minors.

- (e) Outdoor cultivation, including any topsoil, pesticides as defined by Section 72.4(k) of this Article, or fertilizers used for the cultivation of medical marijuana shall not be located within 100 feet of any spring, top of bank of any creek or seasonal stream, edge of lake, delineated wetland or vernal pool. For purposes of determining the edge of Clear Lake, the setback shall be measured from the full lake level of 7.79 feet on the Rumsey Gauge.
- (f) All persons engaging in the cultivation of medical marijuana shall:
  - 1. Have a legal water source on the premises, and have all local, state, and federal permits to utilize the water source.
  - 2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation.
  - 3. Not allow illicit discharges of irrigation or storm water from the premises, as defined in Title 40 of the Code of Federal Regulations, Section 122.26, which could result in degradation of water quality of any water body.
  - 4. Not allow the off-site drift or discharge of fertilizer or pesticides.
  - 5. Pursuant to the California Health and Safety Code, the use of hazardous materials shall be prohibited in the cultivation of marijuana except for limited quantities of hazardous materials that are below State threshold levels of 55 gallons of liquid, 500 pounds of solid, or 200 cubic feet of compressed gas. Any hazardous materials stored shall maintain a minimum setback distance of 100 feet from any private drinking water well, spring, top of bank of any creek or seasonal stream, edge of lake, delineated wetland or vernal pool, and 200 feet from any public water supply well. The production of any Hazardous Waste as part of the Cultivation process shall be prohibited.
  - 6. Dispose of marijuana waste material lawfully.
- (g) Outdoor cultivation shall be completely screened from public view and the views of adjacent parcels with a fully enclosed solid fence of a minimum of six (6) but not more than eight (8) feet in height, with locked gates. The marijuana shall be shielded from public view at all stages of growth. Should the marijuana plant(s) grow higher than the fence, the plants shall be cut so as not to extend higher than the fence. The Fence must be adequately secure to prevent unauthorized entry and include a locking gate that shall remain locked at all times when a Qualified Patient or Primary Caregiver is not present within the Cultivation area. All fences shall comply with the location and height limitations of the Zoning Ordinance and fences seven (7) feet or taller shall require approval of a building permit from the Lake County Building and Safety Division prior to construction.

- (h) Outdoor medical marijuana shall not be cultivated or otherwise placed within 75 feet of any property line or within 150 feet of any off-site residence, as measured from the edge of the fence of the cultivation area. The fence must include a locking gate which shall be kept locked at all times when the qualified patient or caregiver is not in the immediate area. Fences and gates shall comply with the height limits specified by Section 42.11 of the Zoning Ordinance, and the definition of “fence” provided in this Article.
- (i) If the premises is rented or leased, written approval shall be obtained from the property owner(s), containing the property owner(s) notarized signature that authorizes the tenant or lessee to cultivate medical marijuana at the site. A copy of the written approval shall be maintained by the tenant or lessee and made available for review by enforcement officials upon request. Written approvals shall be renewed annually.
- (j) A copy of a current and valid physician recommendation or state-issued medical marijuana identification card shall be displayed within the secure cultivation area, or on the exterior of the building used for indoor cultivation, in a manner that allows law enforcement officials to easily see the card without having to access any building.
- (k) Medical Marijuana cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, odor, smoke, traffic, or other impacts, or be hazardous due to use or storage of fertilizers, pesticides or wastes.
- (l) Outdoor cultivation by medical marijuana collectives, comprised of members who are all residents of Lake County, shall not exceed 48 mature plants or 72 immature plants, provided that the cultivation is conducted on a parcel that is a minimum of 20 acres and located within the “A”, Agriculture and “RL”, Rural Lands zoning districts .

The following additional standards shall apply:

1. The premises on which the medical marijuana is cultivated shall be the principal primary residence of at least one of the persons for whom the medical marijuana is being cultivated.
2. For each member of the medical marijuana collective, the names, contact information, a doctor’s recommendation and the doctor’s name and contact information, or a copy of a state-issued medical marijuana identification card shall be displayed within the secure cultivation area, or on the exterior of the building used for an indoor cultivation, in a manner that allows law enforcement officials access the records at time of compliance inspection.
3. The cultivation shall be completely screened from public view and the views of adjacent parcels with a fence with locked gates, and no medical marijuana shall be cultivated or otherwise placed within 100 feet of any property line or within 200

feet of any off-site residence, as measured from the plant canopies. The fence must include a locking gate which shall be kept locked at all times when the qualified patient or caregiver is not in the immediate area. Fences and gates shall comply with the height limits specified by Section 42.11 of the Zoning Ordinance, and the definition of “fence” provided in this Article. 72-9.

4. Nothing herein shall limit the ability of Enforcement Officials from entering the property to conduct compliance inspections necessary to ensure compliance with this Article. The Sheriff is authorized to determine the number and timing of inspections that may be required. **(Ord. No. 3068, 10/17/2017)**

(m) 1. To determine compliance with the requirements of this article, a self-certification process is hereby established for medical marijuana collectives.

2. The legal representative of a medical marijuana collective shall certify compliance with this section by March 31, 2018 that they are in compliance with the requirements of this article in the following manner:

- a. Submit a self-certification application to the Lake County Community Development Department and pay an application fee. For the purpose of the County’s master fee schedule, an application for the medical marijuana collective certification of compliance shall be considered a major use permit application.
- b. An application for a medical marijuana collective certification of compliance shall include an outdoor cultivation site plan. The requirements of the site plans shall be described on the application form.
- c. As part of the application process, the applicant agrees to an annual compliance monitoring, to pay the fees for the annual compliance monitoring, gives permission for the county staff to enter the property, and will provide all documentation required for the compliance monitoring.
- d. The application shall include a plot plan prepared by a design professional, as that phase is commonly defined under California law, of the boundaries of the cultivation area. The plot plan shall include the size of the cultivation area in square feet.
- e. If the premises is rented or leased, a copy of the written approval of the property owner(s), containing the property owner(s) notarized signature, authorizing the tenant or lessee to cultivate medical marijuana at the site, must be submitted.

3. For certification applicants engaging in the cultivation of medical marijuana prior to September 1, 2016 and upon confirmation in the compliance monitoring, a Certificate of Recognition of Compliance and Good Standing will be issued.

Such a certificate will be good for one year and may be renewed upon confirmation of the certification through a compliance monitoring.

4. For certification applicants engaging in the cultivation of medical marijuana after September 1, 2016 and upon confirmation in the compliance monitoring, a Conditional Certificate of Recognition of Compliance will be issued. Such a certificate will be good for one year and may be renewed upon confirmation of the certification through a compliance monitoring.

5. If the compliance monitoring results in a finding that the applicant is not in compliance with the requirements of this article, the applicant will be notified of the non-compliance issues and what actions are need to be taken for compliance. The Enforcement Official shall set the period for compliance not to exceed 30 days from the date of notification. If the applicant fails to correct the non-compliance and request and pay for the additional compliance monitoring, the County may initiate enforcement proceeding pursuant to section 72-10. In addition to the requirements of section 72-10, no cannabis cultivation permit may be issued for the parcel where the non-compliant cultivation site is located for a one year period from the date deem non-compliant.

6. An applicant may appeal the findings of the compliance monitoring to the Planning Commission. **(Ord. No. 3068, 10/17/2017)**

## **72.6 Indoor Cultivation Limits and Standards:**

- (a) Indoor Medical Marijuana cultivation shall not exceed 100 square feet.
- (b) Indoor lighting shall not exceed 1,200 watts, and shall conform to all applicable electrical codes.
- (c) Indoor Cultivation shall occur only within a legal structure that meets the definition of Indoor and complies with all applicable provisions of the County's Land Use and Development Code. Any accessory structure used for Cultivation of Marijuana shall be ventilated with odor control filters, and shall not create an odor, humidity or mold problem on the Premises or on adjacent Premises. Cultivation within any detached accessory structure that does not meet the definition of Indoor shall be considered Outdoor Cultivation.
- (d) Indoor cultivation area(s) shall have ventilation and filtration systems installed that prevent medical marijuana plant odors from exiting the interior of the structure while addressing the potential for mold. The ventilation and filtration system, along with any plumbing improvements, shall be installed with valid electrical and plumbing permits issued and inspected by the Lake County Building and Safety Division prior to commencing cultivation within the allowable structure.

- (e) Medical marijuana cultivation areas, whether in a detached shed, a garage or inside a residence shall not be accessible to juveniles who are not qualified patients or primary caregivers.
- (f) If the premises is rented or leased, written approval shall be obtained from the property owner(s), containing the property owner(s) notarized signature that authorizes the tenant or lessee to cultivate medical marijuana at the site. A copy of the written approval shall be maintained by the tenant or lessee and made available for review by enforcement officials upon request. Written approvals shall be renewed annually.

#### **72.7 Nuisance Declared; Misdemeanor Violation; Enforcement Authority**

- (a) The cultivation of marijuana plants in excess of the amounts specified by this Article for individuals and collective or cooperative organizations, either indoors, outdoors, or combination thereof on any premises is hereby declared to be unlawful. Any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law. Any person who violates a provision of this Article is subject to criminal sanctions, civil actions, and administrative penalties.
- (b) Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns or is a tenant upon the property upon which medical marijuana is cultivated, except as provided for in Sections 72.5 and 72.6, or owns the medical marijuana that is cultivated at the premises or otherwise violates any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.
- (c) If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed One thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$200.00) for the second violation within one year, and Five Hundred Dollars (\$500.00) for each additional violation within one year. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
- (d) All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the county from the pursuit of any other remedy for the purpose of abating or otherwise regulating or preventing public nuisances.
- (e) Primary responsibility for enforcement of this ordinance shall vest with the Sheriff of the County of Lake and his sworn officers. All other county officials with authority to enforce the County Code shall also have the authority to enforce this ordinance.

- (f) Nothing herein shall confer on any person the right to maintain a public or private nuisance. Except for actions arising out of this chapter, no provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person.

**72.8 Summary Abatement.** Unlawful marijuana cultivation in violation of Sections 72.5(a) through (f) of this Article, or any unlawful indoor cultivation that results in unsafe electrical or structural violations, constitutes an immediate threat or danger to the health, safety and welfare of the public and may, therefore, be summarily abated in accordance with Government Code Section 25845. The County may nevertheless recover its costs for abating the nuisance in the manner set forth in Section 72.9(b)11, and any person(s) determined to be responsible may nevertheless be subject to criminal sanctions, civil actions, and administrative penalties as specified in Section 72.7 & Section 72.10(c) of this Article.

**72.9 Abatement procedures.** Notwithstanding section 72.9(a) of this Article, whenever an Enforcement Official determines that a violation of this Chapter exists that results in a public nuisance, he or she shall direct in writing that the public nuisance be abated within five (5) business days. If the condition(s) continue beyond five (5) business days and are not abated by the property owner or tenant, the Enforcement Official shall be authorized to abate the nuisance.

- (a) **Notice and Order to Abate Unlawful Marijuana Cultivation.** Whenever an enforcement official determines that a public nuisance as described in this Article exists on any property within the unincorporated area of Lake County he or she is authorized to notify the owner and/or occupant(s) of the premises through issuance of a "Notice and Order to Abate Unlawful Marijuana Cultivation".

- (b) **Contents of Notice.** The Notice set forth in Section 72.9(a) shall be in writing and shall:

1. Contain a heading, "Notice and Order to Abate Unlawful Marijuana Cultivation," in letters of not less than three-fourths ( $\frac{3}{4}$ ) of an inch in height.
2. The street address, legal description, Assessors Parcel Number or other description sufficient to identify the premises affected.
3. Identify the owner(s) of record of the property upon which the nuisance exists, and if known identify the occupant(s) if other than the owner(s).
4. A description of the condition causing the nuisance, including the code section(s) violated.
5. The action(s) required to correct the violation(s). Where the Enforcement Official has determined that the condition causing the nuisance can be

abated by the property owner or tenant, the notice shall state the action which will be required to comply with this Article.

6. The County department and Enforcement Official responsible for the enforcement action with contact information including County office location and telephone number.
7. State that the owner or occupant is required to abate the unlawful marijuana cultivation within five (5) business days after the date that said Notice is deemed served.
8. State the date of service, and contain the signature of the Enforcement Official issuing the Notice.
9. Instructions to the property owner describing procedures for scheduling a hearing before the Board of Supervisors for the purpose of presenting information as to why marijuana being cultivated is not in violation of this Article and therefore should not be considered a public nuisance.
10. Contain a statement that if the property owner(s) or occupant(s) fails to request a hearing, all rights to appeal any action of the County to abate the nuisance are waived.
11. Contain a statement that if the work is not completed within the time specified on the notice, or a hearing has not been requested in accordance with Section 72.9(d). of this Article, or a time extension has not been granted to complete the abatement, the county may abate the nuisance without further notification and the property owner will be responsible for all costs associated with the investigation and abatement of the nuisance(s). The costs of such abatement action may be made a special assessment against the premise; may be paid through a Code Enforcement Debt Reduction Agreement; or alternatively may be referred to a debt collection agency.

(c) **Service of Notice.** Such notice shall be deemed properly served if a copy thereof is either:

1. Delivered to owner personally;
2. Posted at the site in a visible location such as a gate or front door.
3. Delivered in any other manner as prescribed by local law.

Service of such notice in the foregoing manner upon the property owner's agent shall constitute service of notice upon the owner. The failure of any person to receive any notice required under this chapter and/or the removal of any posted

notice other than by the county shall not affect the validity of any proceedings taken under this Article.

- (d) **Hearing Procedure.** A hearing before the Board of Supervisors regarding a Notice and Order to Abate Unlawful Marijuana Cultivation may be requested by filing a written request for a hearing with the Lake County Community Development Department within 5 business days of service of the Notice and Order to Abate Unlawful Marijuana Cultivation. The written request for hearing shall specify why marijuana being cultivated is not in violation of this Article and therefore should not be considered a public nuisance.
1. When a hearing is requested as provided for in the Notice and Order to Abate Unlawful Marijuana Cultivation, the Board shall proceed to hear the testimony of the Enforcement Official, his/her assistants or deputies, the testimony of the owner or his/her representatives, and the testimony of other competent persons concerning the conditions constituting such nuisance, the estimated cost of abatement, and other matters which the Board may deem pertinent. Any person affected may be present at such hearing, may be represented by counsel, may present testimony, and may cross-examine the Enforcement Official, and other witnesses. The hearing may be continued from time to time.
  2. The hearing request shall not be deemed complete and shall not be forwarded to the Board of Supervisors unless it specifies why the marijuana cultivation that is subject to abatement in the Notice and Order to Abate Unlawful Marijuana Cultivation is not in violation of this Article. The review authority for determining the adequacy of the hearing request shall be the Community Development Director or his or her designee.
  3. The filing of a request for hearing that has been deemed complete in accordance with Section 72.9(d)2. shall stay the effectiveness of the Notice and Order to Abate Unlawful Marijuana Cultivation until such time as the case has been decided by the Board of Supervisors.
  4. Upon receipt of a complete request for hearing filed in accordance with this Section, the Enforcement Official shall schedule a hearing before the Board of Supervisors. Notice of the hearing shall be sent by first class mail postage prepaid to the property owner and any other persons filing the request for hearing. 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 or posting such notice), the specific sections of this Article that are alleged to be in violation and constitute the public nuisance, and shall direct the owner(s) and any other persons who filed to appear and show cause why the specified condition or use should not be declared a public nuisance and abated.
  5. Upon the conclusion of the hearing, the Board of Supervisors may terminate the abatement proceedings, or it may uphold the Notice and

Order to Abate Unlawful Marijuana Cultivation, prescribing the requirements of such abatement and prescribing the time for the completion of such abatement.

6. If a request for a hearing is not filed within the time specified in Section 72.9(b) of this Article, the Enforcement Official may order or cause the abatement to be performed on or after the 6<sup>th</sup> business day following the service of the Notice and Order to Abate Unlawful Marijuana Cultivation.

#### **72.10 Enforcement.**

- (a) Whenever the Enforcement Official becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within five (5) business days of the date of service of the Notice to Abate Unlawful Marijuana Cultivation, unless timely appealed, or of the date of the decision of the Board of Supervisors requiring such abatement, the Enforcement Official may take one or more of the following actions:

1. Enter upon the property and abate the nuisance by County, State or Federal personnel. The Enforcement Official may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary.
2. Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.

- (b) **Administrative Civil Penalties.**

1. Acts, omissions, or conditions in violation of this Article 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.
2. In determining the amount of the administrative penalty, the Enforcement Official, 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.
3. The Enforcement Official 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 72.9(b) of this Article.

The Notice of Violation and Proposed Administrative Penalty shall be served by certified mail addressed to all of the following:

- i The owner of the property on which the violation exists, at the address shown on the last equalized assessment roll or as otherwise known to the Enforcement Official;
- ii Anyone known to the Enforcement Official 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 Enforcement Official 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.

4. The contents of the Notice of Violation and Proposed Administrative Penalty shall be in the manner in Article VIII, Section 13-49.2 of Chapter 13 of the Lake County Code.
5. If any person to whom the Notice of Violation and Proposed Administrative Penalty is issued requests an Administrative Appeal hearing before the Board of Supervisors, the notice of hearing, conduct of hearing, and hearing procedures shall be in accordance with Article VIII, Section 13-53 of Chapter 13 of the Lake County Code.
6. 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.
7. 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 90 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.
  - i. 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.

- ii. Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.
- iii. 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.
- iv. 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.
- v. The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten (10) 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.
- vi. 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.
- vii. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.
- viii. Within 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 Lake County Recorder's Office.
- ix. 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 Lake County Recorder's Office. This notice of satisfaction will cancel the County's lien under this section.
- x. 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. There shall be no right to trial by jury. The County shall be entitled to its attorney's fees and costs.

8. 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.
9. 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.
10. In addition to any other remedy prescribed in this Article, any nuisance as described in this Article may be subject to an administrative penalty of up to one thousand dollars (\$1,000) per day. The administrative penalty may be imposed by 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.

**72.11 Liability:** The provisions of this Article shall not be construed to protect the Medical Marijuana cultivation site owners, operators and employees, the members of collectives and/or cooperatives associated with Medical Marijuana cultivation site, and the property owner(s) of record for each site from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section, and this Section is not intended to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. Medical Marijuana cultivation site owners, permittees, operators and employees, the members of collectives and/or cooperatives associated with cultivation sites, and the property owner(s) of record for each cultivation site assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from operation of a Medical Marijuana cultivation site. Further, to the fullest extent permitted by law, any actions taken under the provisions of this Section by any public officer or employee of the County of Lake or by Lake County itself shall not become a personal liability of such person or a liability of the County.

**72.12 Conflicts with Other Codes:** If this Article is found to be in conflict with any other Chapter, Section, Subsection, or Title, the provisions of this Article shall prevail.

