

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO  
AMENDING CHAPTER 20 OF TITLE 5 OF THE YOLO COUNTY CODE REGARDING  
MARIJUANA CULTIVATION

The Board of Supervisors of the County of Yolo ordains as follows:

**SECTION 1. Purpose**

The purpose of this Ordinance is to amend Chapter 20 of Title 5 of the Yolo County Code regarding marijuana cultivation to do the following: remove the requirement that commercial marijuana activities in the unincorporated area of Yolo County be for medicinal purposes only and to allow distributor licenses in conjunction with the nursery and processing facilities pilot program and when requested under a development agreement.

**SECTION 2. Background and Findings**

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"), which decriminalized the use of medicinal marijuana in California; and

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

C. In 2015, California enacted three bills—Assembly Bill 243 (Wood, Chapter 688 of the Statutes of 2015); Assembly Bill 266 (Bonta, Chapter 689 of the Statutes of 2015); and Senate Bill 643 (McGuire, Chapter 719 of the Statutes of 2015)—that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal marijuana in California. This regulatory scheme is known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

D. On November 8, 2016, the voters of the State of California ("State") enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"), which, subject to certain exceptions, generally established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of recreational marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana; and

E. In June 2017, the California Legislature passed Senate Bill 94, which effectively repealed MCRSA and incorporated certain provisions of MCRSA in the licensing provisions of AUMA. These consolidated provisions are now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

F. Marijuana remains an illegal Schedule I controlled substance under federal law. The intent of MAUCRSA is to ensure a comprehensive regulatory system that takes production and sales of marijuana away from an illegal market and curtails the illegal diversion of marijuana from California into other states or countries; and

G. Pursuant to Article XI, section 7 of the California Constitution, the County of Yolo may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

H. California's marijuana laws, the Compassionate Use Act, AUMA and MAUCRSA, each recognize and preserve the authority of cities and counties under Section 7 of Article XI of the California Constitution to regulate the cultivation of marijuana; and

I. On this basis, the County adopted the initial version of this Ordinance on March 22, 2016 and, subsequently, amended it on several occasions based on the following findings, which are restated herein (with minor updates and other changes) to support the adoption of this amendment:

1. Unregulated marijuana cultivation has been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the State of California. Unregulated marijuana cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance; and

2. Unregulated marijuana cultivation in the unincorporated areas of Yolo County can adversely affect the health, safety and well-being of the County, its residents and environment. Regulation of marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment and offensive odor that may result from unregulated marijuana cultivation; and

3. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act, AUMA and MAUCRSA 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 reduction in the harms caused or threatened by unregulated cultivation of marijuana in the unincorporated area of Yolo County and

4.It is the purpose and intent of this Ordinance to regulate the cultivation of marijuana in a way 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 area of Yolo County. This Ordinance is intended to prohibit the cultivation of marijuana by anyone for any purpose other than allowed in strict compliance with local ordinances and applicable state law; and

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

6.Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the cultivation, sale or distribution of marijuana other than as expressly allowed by this Ordinance; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law; and

J. The County of Yolo intends this Ordinance to be a temporary ordinance, adopted to regulate marijuana on an interim basis while the County develops a land use-based process that would function as part of the Zoning Code.

**SECTION 3.** Chapter 20 of Title 5 of the Yolo County Code is deleted in its entirety and replaced with the following:

## **"MARIJUANA CULTIVATION"**

### **Section 5-20.01 Purpose and Intent.**

- A. It is the purpose and intent of this Chapter to regulate marijuana in a manner that is consistent with state law and that promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Yolo by balancing: (1) the needs of medical patients and their caregivers for enhanced access to medical marijuana; (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts of marijuana cultivation and related activities; and (3) the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation and related activities.
- B. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) to conflict with state law as contained in MAUCRSA; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California law.

- C. Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of marijuana and other commercial marijuana activities as allowed under this Chapter from compliance with all other applicable provisions of the Yolo County Code or compliance with any applicable state laws. Further, nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of marijuana and other commercial marijuana activities as allowed under this Chapter from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.
  
- D. All persons operating facilities and conducting activities associated with commercial marijuana activities, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

**Section 5-20.02 Relationship to Other Laws.**

This Chapter is not intended to apply to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. This Chapter shall be interpreted to be compatible and consistent with federal, state, and county enactments and in furtherance of the public purposes which those enactments express. The provisions of this Chapter will supersede any other provisions of this Code found to be in conflict.

**Section 5-20.03 Definitions.**

As used in this ordinance the following definitions shall apply:

- A. "Abatement" or "Abate" means the removal and destruction of all marijuana plants or products creating the condition(s) constituting a violation of this Chapter as identified in a notice of violation issued by the Enforcing officer.
  
- B. "Abatement costs" means any costs or expenses, including County staff time reasonably related to the Abatement of a violation under this Chapter, and shall include, but shall not be limited to, enforcement, investigation, summaries, reports, notices, telephonic contact, correspondence, mailing expense, title search costs, costs incurred in obtaining an administrative warrant, administrative costs, including the total direct and indirect costs of enforcement established by generally accepted accounting principles that are reasonably and necessarily incurred by the County to investigate, inspect, or

cure any violation or monitor the recurrence of any violation that is the subject of a notice issued by the Enforcing officer, including, but not limited to, scheduling and participation at hearings, hearing officer costs, expenses incurred by the County, and any other costs associated with the removal, abatement or correction of a violation.

- C. "Applicant" means a Person applying for a License pursuant to this Chapter.
- D. "Caregiver" or "primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7 as it now reads or as amended.
- E. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- F. "Contiguous" means any two Legal parcels which share a mutual boundary. Notwithstanding the foregoing, Legal parcels shall be considered contiguous, even if they are separated by roads, streets, utility easements or railroad rights-of-way.
- G. "Cultivate" or "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- H. "Cultivation Site" means one or more locations or facilities on one Legal parcel subject to a single approved License where marijuana is planted, grown, harvested, dried, cured, graded, trimmed, processed or packaged for transport. It shall only be the geographical area that is specifically and accurately described in executed documents verifying lawful possession of the Premises and the area specified in the applicable Notice of Intent issued pursuant to Central Valley Regional Water Quality Control Board Order No. R5-2215-0113. One or more areas of marijuana cultivation may exist on the Legal parcel used for that purpose.
- I. "Distributor License" is a license issued by the County of Yolo pursuant to Section 5-20.16 of this Chapter, California Business and Professions Code section 26070 and applicable State regulations.
- J. "Enforcing officer" shall mean any County officer or employee, including his/her designee, with the authority to enforce this Code, its adopted codes or applicable State codes.
- K. "Flowering" means that a marijuana plant has formed a mass of pistils measuring greater than one half inch wide at its widest point.

- L. "Garden canopy" means the total aggregate area(s) of marijuana cultivation on a single Legal parcel as measured around the outermost perimeter of each separate and discrete area of marijuana cultivation at the drip line of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, and the exterior dimensions of garden beds, garden plots and Hoop houses.
- M. "Greenhouse" means a completely enclosed structure whose structural members are made of pre- formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.
- N. "Hoop house" means a structure with structural members that are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.
- O. "Immature plant" means a marijuana plant that is not yet Flowering.
- P. "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 Yolo, 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. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- Q. "Indoor cultivation" means the cultivation of marijuana within a structure using artificial light, at a rate greater than 25 watts per square foot.
- R. "Legal parcel" or "parcel" means any parcel of real property for which one legal title exists 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). Where Contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single "Premises" for purposes of this Chapter.

- S. "License" means a license issued by the County of Yolo to cultivate medical marijuana for commercial purposes in the unincorporated areas of Yolo County pursuant to this Chapter.
- T. "Licensee" means any person holding a License under this Chapter.
- U. "Marijuana", or "cannabis", shall have the same definition as "cannabis" as set forth in California Business and Professions Code section 26001 as it now reads or as amended.
- V. "Medical marijuana" shall have the same definition as "medical cannabis" and "medical cannabis product" as set forth in California Business and Professions Code section 26001 as it now reads or as amended.
- W. "Medical marijuana collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, 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, store, and/or dispense marijuana for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.
- X. "Mixed-light cultivation" means the cultivation of marijuana using light deprivation and/or artificial lighting below a rate of 25 watts per square foot.
- Y. "Nursery" means a facility that produces only clones, Immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of marijuana.
- Z. "Nursery License" is a license issued by the County of Yolo to operate a Nursery for commercial purposes in the unincorporated areas of Yolo County pursuant to Section 5-20.16 of this Chapter.
- AA. "Outdoor" or "Outdoors" means any location that is not "Indoors" within a fully enclosed and secure structure as defined in this Chapter.
- BB. "Outdoor cultivation" means the cultivation of marijuana without the use of light deprivation and/or artificial lighting in the canopy area.
- CC. "Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth, County-owned campgrounds and the Yolo Bypass Wildlife Area headquarters. State or Federal designated parks and

forestlands as recognized within the Yolo County General Plan are not included within this definition.

DD. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group, entity or combination acting as a unit, and the plural as well as the singular.

EE. "Premises" shall mean a single, Legal parcel of real property. In addition, 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.

FF. "Processing" means to harvest, dry, cure, grade, trim, or package for transport marijuana.

GG. "Processing facility" means a site that conducts only drying, curing, grading, trimming or packaging for transport of marijuana and nonmanufactured marijuana products.

HH. "Processing License" is a license issued by the County of Yolo to operate a Processing facility for commercial purposes in the unincorporated areas of Yolo County pursuant to Section 5-20.16 of this Chapter.

II. "Qualified Patient" shall have the same definition as set forth in California Health and Safety Code section 11362.7 as it now reads or as amended.

JJ. "Residence" means a legal residential structure providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one kitchen.

KK. "Residential treatment facility" means a State-licensed residential facility that provides treatment for drug and/or alcohol dependency.

LL. "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. 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 vocational or professional institution of higher education, including a community or junior college, college or university.



MM. "Youth-oriented facility" means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

#### **Section 5-20.04 Prohibited Activities.**

A. Except as provided for in the exemptions set forth in paragraphs (1) and (2) of this Section, the cultivation of marijuana, in any amount or quantity, upon any Premises, is declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

1. Personal.

a. Patient.

- 1) Not more than six living plants may be planted, cultivated, harvested, dried or processed within a single private Residence, or upon the Premises of that private Residence, where a Qualified Patient resides, provided that Qualified Patient cultivates marijuana for his or her sole personal medical use and does not sell, distribute, donate, or provide marijuana to any other Person or entity.
- 2) The plant number limitation is imposed regardless of the number of Qualified Patients residing on the Premises, participating directly or indirectly in or benefitting from the cultivation.
- 3) The Qualified Patient shall reside full-time in the Residence where the medical marijuana cultivation occurs and may not participate in medical marijuana cultivation at any other residential location within the County of Yolo.

b. Adult Use. Subject to Health and Safety Code section 11362.2, not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private Residence, or upon the Premises of that private Residence, at one time.

2. Commercial. Except as provided in paragraph (A)(1) of this Section, commercial cultivation of marijuana shall be allowed only following the issuance of a License pursuant to the provisions of this Chapter.

a. All Licenses shall comply with the following requirements:

- 1) Cultivation shall be in compliance with California Regional Water Quality Control Board Central Valley Region Order No. R5-2015-0113

as it now reads or as it may be amended from time to time. To be eligible for a License, an Applicant shall have submitted a Notice of Intent (NOI), which must be complete and have been received with full payment by the Central Valley Regional Water Quality Control Board no later than 5:00 p.m. on October 11, 2016, to obtain regulatory coverage by the Central Valley Water Board as a Tier 1, 2 or 3 cultivator, Monitoring Self-Certification. Applicants must be able to demonstrate compliance with Order No. R5-2015-0113, or any substantially equivalent rule that may be subsequently adopted by the County of Yolo or other responsible agency. Notwithstanding the foregoing, the Cultivation Site Garden canopy must be between 1,000 square feet and 43,560 square feet; cultivation of marijuana of less than 1,000 square feet under this paragraph is prohibited.

- 2) Applicants shall be currently leasing or, as of October 11, 2016, have been the record owner of or have a fully executed purchase and sale agreement for the purchase of, the real property on which they will cultivate marijuana and for which they have filed a Notice of Intent with the Central Valley Water Board by October 11, 2016.
- 3) Licensees are not authorized to sublet any portion of a Cultivation Site for any purpose.
- 4) Prior to the issuance of an initial or renewal License under this Chapter, Applicants shall:
  - i. Along with owners of the Premises on which cultivation will occur, sign a written consent to reasonable on-site compliance inspections of both the Cultivation Site area and of all records and documents related to the marijuana activities occurring on the Premises by law enforcement, or other County personnel during reasonable hours, as specified in Section 5.20.10(F).
  - ii. Along with owners of the Premises on which cultivation will occur, execute an agreement to indemnify and hold harmless the County of Yolo and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the cultivation of marijuana and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation of marijuana in a form prescribed by the County. The indemnification shall apply to any damages, costs of suit, attorneys' fees or other expenses awarded against the County, its agents, officers and employees in connection with any such action.

In addition, the agreement shall release the County of Yolo, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any abatement, arrest or prosecution for cultivation in violation of state or federal laws.

- iii. Sign a statement under penalty of perjury warranting that they will abide by the requirements of this Chapter and applicable state law in a form prescribed by the County.
- iv. Complete any application forms prescribed by the County and pay fees as established by resolution and adopted by the Board of Supervisors as amended from time to time.
- v. Furnish the County a surety bond in the amount of ten thousand dollars furnished by a corporate surety authorized to do business in the state. Such bond shall be in favor of the County and shall be approved by the County Counsel. Such bond shall be conditioned upon full and faithful performance by the Licensee of all obligations under this Chapter and any License issued hereunder and shall be kept in full force and effect by the Licensee throughout the life of the License and all renewals thereof. The Board of Supervisors may from time to time by resolution establish additional bond requirements as it deems necessary.

In the event that the Licensee violates any of the provisions of this Chapter or any County rules or orders, such violation shall permit the County at its option to resort to the bond to cover any Abatement Costs or Administrative Penalties assessed.

- 5) Licensees are prohibited from commingling marijuana from other Licensees, from unlicensed cultivators or from the Licensee's other Cultivation Sites, and from transferring or receiving any marijuana or non-manufactured marijuana products to or from other Licensees, unlicensed cultivators or Licensee's other Cultivation Sites. Notwithstanding the foregoing, Licensees are allowed to receive Immature plants or seeds from licensed nurseries and to transfer marijuana and non-manufactured marijuana products to licensed processors.
- 6) Licensees shall participate in any track and trace program required by the County, pay any associated fees and meet all associated requirements.

Failure to fully comply with the County's track and trace program, as determined by the County, is unlawful and constitutes a violation of this Chapter subject to disciplinary action pursuant to Section 5-20.04(A)(2)(c) and enforcement pursuant to Section 5-20.10 et seq.

- 7) Child Support Obligations.
- i. Prior to the issuance of an initial or renewal License under this Chapter, and at all times while holding a License, Applicants and Licensees shall be current with their monthly child support obligations. If the Applicant or Licensee has an account with past due child support arrears, he/she must have that balance at zero or have verification from the Department of Child Support Services that they have been in and remain in compliance with a court ordered payment plan in order to remain eligible for a License.
  - ii. Licensees shall provide the County a quarterly list of all employees employed by Licensee at any time during the quarter. Reports are due by the 15<sup>th</sup> of the month following the end of the quarter. (March, June, September, and December). The list shall include names, addresses, phone numbers and social security numbers for all employees.
  - iii. If Licensee uses a payroll withholding process, Licensee must comply with any income withholding order for child support for any employee in Licensee's employ. In addition, if the income withholding order is for an owner or part-owner of the business, the business shall also comply with the income withholding order and provide necessary tax information if self-employed for purposes of determining accurate child support orders.
- b. Marijuana Cultivation License.
- 1) Other than pursuant to Section 5-20.04(A)(1), it is unlawful to cultivate marijuana in the County of Yolo without first having obtained a License under this Chapter.
  - 2) The County Administrator is authorized to establish procedures and guidelines to process License applications.
  - 3) A License does not create any interest of value, is not transferable, and automatically terminates upon transfer.

- 4) A License issued by the County constitutes a revocable privilege. Applicants and Licensees have the burden of proving its qualifications for a License at all times.
- 5) The License shall be valid for one calendar year, or part thereof, beginning January 1<sup>st</sup> of the year in which it is issued. The License will expire on December 31<sup>st</sup> of the year in which it was issued.
- 6) A License is issued to and covers only the Licensee identified on the License with respect to the Cultivation Site identified on the License. The License does not run with the land.
- 7) The County shall not accept any applications for an initial License after 5:00 p.m. on December 31, 2017.
- 8) Notwithstanding any provision in this Chapter to the contrary, a Licensee with a currently valid License may relocate the Licensee's Cultivation Site to a site pre-approved in writing by the County upon a determination that the proposed site will result in reduced community or environmental impacts. If relocating a Cultivation Site under this paragraph, the Licensee may co-locate on the Premises of another Licensee provided the Premises are no less than 40 acres in size. There shall not be more than two Licenses located on a single Premises.

c. Denial or Revocation of License.

- 1) The County may deny an application for an initial or renewal License, revoke an original or renewal License, or may suspend, place on probation with terms and conditions, or otherwise discipline Licensees (collectively referred to as "disciplinary action"), for any of the following reasons:
  - a) Failure to comply with one or more provisions of this Chapter or any rule or regulation adopted pursuant to this Chapter;
  - b) Failure to conduct cultivation operations in a manner that ensures the security of the crop and safeguards against diversion for illegal purposes;
  - c) Violation of any requirement of the Yolo County Code;
  - d) Previous violation by the Applicant, or previous violation at the proposed Cultivation Site, of any provision of the Yolo County Code or state law related to the cultivation of marijuana;

- e) The creation or maintenance of a public nuisance where the Licensee has failed to comply with reasonable conditions to abate the nuisance;
- f) Failure to allow unannounced inspections of the Premises by County staff or law enforcement at any reasonable time, as specified in Section 5.20.10(F), without notice;
- g) Discovery of untrue statement(s) or an omission of a material statement in a License application;
- h) Failure to comply with any state or local law, ordinance, or regulation including, but not limited to, the payment of taxes as required under the Revenue and Taxation Code, except as provided for in this division or other California law;
- i) Failure to comply with any applicable federal, state, or local environmental laws, regulations, or ordinances;
- j) Failure to comply with any state or local law, ordinance, or regulation conferring worker protections or legal rights on the employees of a Licensee;
- k) Failure to maintain safe conditions for inspection by the County;
- l) Failure to pay applicable state or County taxes or fees on marijuana activity;
- m) Attempts to falsify or misrepresent data or information, or provide incomplete data or information, entered into the track and trace system;
- n) The Applicant, owner, or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of marijuana cultivation. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the County shall include, but not be limited to, the following:
  - i. A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.
  - ii. A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

- iii. A felony conviction involving fraud, deceit, or embezzlement.
  - iv. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
  - v. A felony conviction for drug trafficking.
  - vi. Except as provided in paragraphs (iv) and (v) directly above, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license;
  - vii. The Applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code;
  - viii. The Applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial marijuana activities, has had a marijuana operations license suspended or revoked in the three years immediately preceding the date the application is filed with the County.
- 2) Under no circumstances shall a cause of action for monetary damages be allowed against the County of Yolo or any County employee as a result of a denial or a revocation of a License.
- 3) The County may take disciplinary action against a Licensee when the violation was committed by the Licensee's officers, directors, owners, agents, or employees while acting on behalf of the Licensee or engaged in commercial marijuana activity.
- 4) Denial, suspension or revocation of a license issued by the State of California, or by any of its departments or divisions, shall

immediately suspend the ability of a marijuana business to operate within the County, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a marijuana business, such revocation or termination shall also revoke or terminate the ability of a marijuana business to operate within the County of Yolo.

- 5) The County may recover the costs of investigation and enforcement of disciplinary action following the procedures set forth in Section 5-20.11 of this Code.
- 6) Any disciplinary action may be appealed subject to the following procedure:
  - a) Use of hearing officers. An appeal of any disciplinary action may be heard by the County Administrator, or his designee, or by a third party hearing officer designated by the County Counsel (any one of which is referred to as the "administrative hearing officer").
  - b) Written request for appeal.
    - i. Within five calendar days after the date notice of a disciplinary action is served in accordance with Section 5-20.11(A)(2), below, an aggrieved party may appeal such action by filing a written appeal with the Clerk of the Board of Supervisors setting forth the reasons why the disciplinary action was not proper.
    - ii. At the time of filing, the appellant shall pay any designated appeal fee, established by resolution of the Board of Supervisors from time to time.
  - c) Appeal hearing.
    - i. Upon receipt of the written appeal, the Clerk of the Board of Supervisors shall set the matter for a hearing before the administrative hearing officer.
    - ii. The hearing shall be held at the date, time and location indicated on a notice to appellant, which shall be held within a reasonable time after the filing the appeal, but in no event later than 45 days from the date of such filing.



- iii. The County shall notify the appellant of the time and location at least five days prior to the date of the hearing.
  - iv. The appellant may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The administrative hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
  - v. The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide, at his or her sole cost, an interpreter who has been certified as an interpreter by either the State of California or the County of Yolo.
  - vi. The scope of an appeal of a denial to issue a License shall be limited to a determination of whether the application meets the requirements of this Chapter.
  - vii. If no appeal is made within the time specified for an appeal following service of notice of disciplinary action, the disciplinary action shall be deemed final and conclusive.
  - viii. At the conclusion of the hearing, the administrative hearing officer may affirm, reverse or modify the disciplinary action. The decision of the administrative hearing officer shall be final and conclusive.
- d) Determination after Hearing. The administrative hearing officer shall consider the evidence presented by the parties, and shall issue a written decision and order that affirms, reverses or modifies the disciplinary action. Such decision shall be delivered to the appellant by personal delivery, by first class mail, postage prepaid, or by overnight delivery. The decision shall become effective when signed by the administrative hearing officer and on the day the decision is personally delivered to the appellant, or

five days after the decision is mailed to the appellant by first class mail, or the day after it's sent by overnight mail.

d. Renewal of License.

- 1) A Licensee may apply for the renewal of a License no less than thirty days prior to the License's expiration date. No activity related to marijuana cultivation may occur on the Premises and the marijuana business shall cease operations after the expiration of a current License.
- 2) An application for renewal will only be accepted if it is accompanied by the requisite licensing fees.
- 3) Each application for renewal shall include updated information for any part of the application that has undergone a change in circumstance since the original application or last renewal filing.
- 4) All owners of the marijuana business and the owners of the property on which the business is located must be fingerprinted each year at renewal if required in the discretion of the County.
- 5) Unless administratively continued upon a showing of good cause and at the sole discretion of the County, a License is immediately invalid upon expiration and the marijuana business shall cease operations. If a License expires, the County may approve a renewal of the expired License at any time up to three months from the expiration date of the License. After the License has been expired for three months, the County may not renew the License, and the holder of the expired License must apply for and obtain a new License to resume operations.

B. Additional Prohibitions.

1. Notwithstanding compliance with the provisions of this Chapter, cultivation of marijuana is prohibited if cultivated in any amount or quantity, upon any Premises, that discharges from any source whatsoever such quantities of air contaminants, odor or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons, to the environment or to the public or which endanger the comfort, repose, health, or safety of any such persons or the public or which cause to have a natural tendency to cause injury or damage to business or property.
2. No person owning, leasing, occupying, or having charge or possession of

any property within the County shall cause, or allow such property to be used for the cultivation of marijuana in violation of this Chapter. The property owner shall be responsible and jointly liable for all violations of this Chapter and applicable laws on the property.

3. Medical marijuana collectives shall not cultivate marijuana in excess of the amount allowed pursuant to Section 5-20.04(a)(1) above without a License and any other approval required under this Chapter.
4. Except those activities expressly allowed pursuant to a License issued under this Chapter, the establishment, maintenance, or operation of any commercial marijuana business or activity, including, but not limited to, cultivation, processing, manufacture, distribution (including delivery as defined in Business and Professions Code § 26001 (h)), transportation, laboratory testing, and sale, which would require a state license to be issued pursuant to MAUCRSA, is prohibited within the unincorporated area of the County of Yolo.

#### **Section 5-20.05 Limitation on Location to Cultivate Marijuana.**

- A. The cultivation of marijuana, in any amount or quantity, shall not be allowed in the following areas, if in existence at the time an initial License is issued:
  1. Outdoors within 1,000 feet of a Youth-oriented facility, a School, a School bus stop, a Park, a Church, a Residential treatment facility or federal lands held in trust by the federal government, or that is the subject of a trust application, for a federally recognized tribal government. The setback from lands held in trust, or the subject of a trust application, for a federally recognized tribal government shall apply prospectively and not be applicable to those exempt under 5-20.04(A)(1) and (2).
    - a. 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 Youth-oriented facility, School, School bus stop, Park, Church, Residential treatment facility or tribal lands are located.
  2. Outdoors within 75 feet of any occupied residence located on a separate parcel. Notwithstanding the foregoing, a proposed outdoor Cultivation Site that is the subject of an application for an initial License filed between October 24, 2017 and December 31, 2017 must be at least 1,000 feet from of any occupied residence located on a separate parcel.
- B. Licensees are not authorized to relocate the Cultivation Site to other areas or

units within a structure or outdoors on licensed Premises without first filing a change of location or modification of the License, and obtaining approval from the County.

### **Section 5-20.06 Residency Requirements.**

- A. Persons cultivating marijuana under this Chapter shall meet one of the following requirements:
  - 1. Own the Premises where marijuana is cultivated; or
  - 2. Have entered into a written lease with the record owner of the property and have obtained the written permission (including notarized signatures) of the record owner(s) consenting to the cultivation of marijuana on the Premises.
- B. Evidence of lawful possession consists of properly executed deeds of trust, leases, evidence of ownership of the licensed Premises, or other written documents acceptable to the County.

### **Section 5-20.07 Cultivation of Marijuana.**

- A. It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within any unincorporated area of the County to cause or allow such parcel of land to be used for the cultivation of marijuana in violation of the requirements and limitations imposed by this Chapter or without being in full compliance with all Yolo County Code requirements prior to cultivation.
- B. The use of light assistance for the Outdoor cultivation of marijuana shall not exceed a maximum of 600 watts of lighting capacity per 100 square feet of growing area.
- C. All lights used for the cultivation of marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the Premises upon which they are placed.
- D. The cultivation of marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, river, ditch or any other body or source of water.
- E. All buildings where marijuana is stored shall be properly secured to prevent unauthorized entry.

- F. All Licensees shall prominently display the License on the Premises identified on the License. The License must be displayed where it can be viewed by the public and County staff.
- G. Nothing in this Section shall be construed as a limitation on the County's authority to abate any violation of any applicable law, federal, state or local, which may exist from the cultivation of marijuana plants or any part thereof from any location, Indoor or Outdoor.
- H. At the discretion of the County, all marijuana grown in Yolo County is subject to the requirement that it be in a location fully enclosed by an aesthetically pleasing, opaque fence at least six feet in height, adequately secured by a locked gate to prevent unauthorized entry. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

#### **Section 5-20.08 Testing.**

- A. Marijuana shall not be sold or distributed pursuant to a license provided for under this Chapter unless a representative sample of the marijuana has been tested by a licensed testing laboratory.
- B. Marijuana shall be tested to determine whether the presence of contaminants exceeds the levels established by the California Bureau of Cannabis Control. Prior to distributing or selling any marijuana that contains more than the permissible levels of contaminants, the Licensee shall mitigate for the contaminant and label all marijuana with the results of the test.
- C. "Contaminants" shall have the same definition as set forth in Business and Professions Code section 26100, as it now reads or as it may be amended from time to time.

#### **Section 5-20.9 Public Nuisance.**

A violation of any provision of this Chapter shall be deemed to be a public nuisance.

#### **Section 5-20.10 Enforcement.**

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. The County or the District Attorney, on behalf of the people of the State of California, may, in their discretion, enforce a violation of this Chapter by the

prosecution of a civil action and/or civil penalties, including an action for injunctive relief without first going through the administrative procedures set forth in this Chapter.

- C. The County or the District Attorney, on behalf of the people of the State of California, may also abate a violation of this Chapter through the abatement process established by Government Code section 25845 or as set forth in this Chapter.
- D. Any violation of this Chapter is declared to be a misdemeanor. Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors. Any violations of this Chapter may be prosecuted criminally and/or civilly.
- E. Any Person that violates this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, on which any violation of any provision of this Chapter is committed, continued or permitted by any such Person. Any violation which persists for more than one day is deemed a continuing violation.
- F. At any time between 8:00 a.m. and 8:00 p.m. and without notice,, any officer, employee, or designated agent of the County may enter upon any private or public property for the purpose of observing compliance of the Cultivation Site with the provisions of this Chapter, including access to and inspection of the Cultivation Site's records, books, accounts, financial data, and any and all data relevant to its licensed activities for the purpose of conducting an audit or examination, and the owner, occupant, or Person in charge of the Premises shall permit the entry and inspection.
- G. Nothing in this Chapter shall be construed as imposing on the Enforcing officer or the County of Yolo any duty to issue any notice hereunder, or to abate any unlawful marijuana cultivation, or to take any other action with regards to any unlawful marijuana cultivation, and neither the Enforcing officer nor the County of Yolo shall be held liable for failure to issue any notice hereunder, or for failure to abate any unlawful marijuana cultivation, or for failure to take any other action with regard to unlawful marijuana cultivation.

## **Section 5-20.11 Abatement Procedure.**

### **A. Notice.**

1. Whenever the Enforcing officer determines that a violation of this Chapter exists, he or she may issue a notice of violation and order to abate ("Notice").
2. A Notice issued by the Enforcing officer shall be served as follows by either:
  - a. Delivering it personally to the owner or the occupant; or
  - b. By first class mail, postage pre-paid, addressed to (i) the owner at the address shown on the last equalized assessment roll or as otherwise known to the Enforcing officer, and (ii) to anyone known to the Enforcing officer to be in possession of the property at the street address of the property subject to the Notice, if the property is capable of receiving mail.
  - c. By overnight mail, addressed to (i) the owner at the address shown on the last equalized assessment roll or as otherwise known to the Enforcing officer, and (ii) to anyone known to the Enforcing officer to be in possession of the property at the street address of the property subject to the notice, if the property is capable of receiving mail.
3. Date of service shall be deemed to be the date of personal service, or five days after notice is deposited in the United States mail, or one day after notice is delivered to a location or deposited in a box maintained by an overnight delivery service.
4. In the event that, after reasonable effort, the Enforcing officer is unable to serve the Notice as set forth above, service shall be accomplished by posting a copy of such Notice conspicuously along the frontage of the real property subject to the Notice, or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcing officer to be in possession of the property. Service shall be deemed to have been completed upon posting.
5. If the Notice is properly and timely served, the failure of any owner or occupant to receive such Notice shall not affect the validity of the proceedings conducted herein and shall not affect the validity of service or the validity of any administrative penalties imposed pursuant to this Chapter upon any other Person.

3. The Enforcing officer may record the Notice.
4. A Notice shall be in writing and include the following:
  - a. If known, identify the person(s) violating this Chapter, or in the case of property where the violation is occurring, identify the owner(s) as named in the records of the county assessor, and identify the occupant(s) if other than the owner(s) if known;
  - b. The approximate location of the violation;
  - c. A general description of the violation;
  - d. A statement that the unlawful marijuana cultivation must be abated within 72 hours after the date that the Notice is served;
  - e. That an Administrative Penalty will accrue for each day that the violation continues to exist after the expiration of the 72 hour period;
  - f. The date of service;
  - g. A statement that the violation determination may, within five calendar days after the date the Notice was served, be appealed by providing the Clerk of the Board of Supervisors with a request in writing for a hearing to appeal the determination of the Enforcing officer;
  - h. A statement that unless an appeal hearing is requested within the time prescribed in the Notice, the Enforcing officer will abate the nuisance at the expense of those determined by the Enforcing officer to have violated this Chapter. It shall also state that the Abatement Costs and the Administrative Penalty may be made a special assessment added to the county assessment roll and become a lien on the real property where the violation has occurred, on the real property owned by those persons violating this Chapter, or be placed on the unsecured roll.
- B. Absent timely appeal, the Notice shall be deemed final and conclusive and the Enforcing officer may 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, but need not, apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary in the sole discretion of the Enforcing officer.



- C. If a violation is corrected pursuant to a Notice and the same conduct is committed within 45 days of correction, the violation will be deemed continuing and immediate fines will be incurred dating back to the date of original Notice.
- D. Upon the occurrence of three verified violations or hearing officer determinations of violation of any of the License requirements or standards issued to the owner or operator at any property or combination of properties of the same owner or operator within a two-year period, all Licenses for marijuana cultivation held by said owner or operator shall be automatically deemed nullified, voided and revoked. Upon revocation, an application to reestablish a marijuana cultivation operation at the subject property shall not be accepted for a minimum of two years.
- E. Administrative Hearing.
1. In order to hear cases brought by the Enforcing officer under this Chapter, the Board of Supervisors authorizes the use of a hearing officer appointed pursuant to Yolo County Code section 1-5.09.
  2. The hearing officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the Notice constitute a violation under this Chapter. This hearing shall be held no more than ten calendar days after service of the Notice.
  3. The hearing officer may continue the appeal hearing from time to time for good cause.
  4. The hearing officer shall consider the matter de novo and determine whether:
    - a. The conditions existing on the property subject to the Notice constitute a nuisance under this Chapter; and
    - b. To impose, modify, or disapprove, in whole or in part, the proposed penalty set forth in the Notice.
  5. The owner(s) and/or occupant(s) of the property shall be given an opportunity at the hearing to present and elicit testimony (including by cross-examination) and other evidence regarding whether the conditions existing on the property constitute a violation of this Chapter, and/or to contest the proposed amount of administrative penalty. Failure of the owner(s) and/or occupant(s) to appear and present evidence at the hearing shall be deemed a withdrawal of the request for hearing and shall

constitute a failure to exhaust administrative remedies.

6. 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 hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
7. The standard of proof shall be by a preponderance of the evidence and the burden of proof to establish the existence of the nuisance shall be borne by the Enforcing official. The burden of proof that the nuisance has been abated shall be borne by the owner(s) and/or occupant(s).
8. The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter, at its sole cost, who has been certified as an interpreter by either the State of California or the County of Yolo.
9. After the hearing, the hearing officer shall render his or her written decision affirming, reversing or modifying the determination made by the Enforcing officer about the alleged violation. If the violation is affirmed, the decision shall include a statement that the County is entitled to recover its Abatement Costs and Administrative Penalties. If the hearing officer determines that the violation continues to exist, the decision shall also order that the owner of the property, or persons known to be in possession of the property, abate the violation within a reasonable time, not to exceed two calendar days of the date of service of the hearing officer requiring such abatement.

A copy of the decision shall be served on the parties upon whom the Notice was served pursuant to Section 5-20.11(A)(2) and (3) or in the manner agreed upon by the parties. The decision shall be final and conclusive when signed by the hearing officer and served as provided by this paragraph.

Payment of Abatement Costs and an Administrative Penalty specified in the hearing officer's decision shall be made to the County within 20 calendar days of the decision, unless timely appealed to the Superior Court in accordance with Government Code section 53069.45, subdivision (b).

## F. Enforcement of Abatement Order

1. Any owner or occupant may abate the nuisance or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the Enforcing officer. An owner or occupant abating unlawful marijuana cultivation hereunder shall notify the Enforcing officer upon completion of abatement. Abatement shall not be deemed completed until the unlawful marijuana has been completely removed from the Premises and destroyed and notification of such has been provided as set forth in this Section. Such abatement by any owner or occupant shall not impair the Enforcing officer's ability to impose an Administrative Penalty accrued prior to such abatement.
2. Notwithstanding the foregoing, whenever the Enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within two calendar days of the date of service of the decision of the hearing officer requiring such abatement, the Enforcing officer may 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, but need not, apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary in his or her sole discretion.
3. If a violation is corrected pursuant to an abatement order, either by the owner, occupant, or the County, and the same conduct is committed within 45 days of correction, the violation will be deemed continuing and immediate fines will be incurred dating back to the date of original abatement order.
4. The owner and/or occupant of the property shall be responsible for paying all of the County's Abatement Costs. Each department performing abatement activities shall, upon completion of the activity, report Abatement Costs to the County.

## G. Liability for Abatement Costs and/or Administrative Penalties; Interest.

1. No Person or entity owning, leasing, occupying or having charge or possession of any Premises within the unincorporated area of the County of Yolo shall cause, permit, maintain, conduct or otherwise suffer or allow a public nuisance as defined in this Chapter to exist. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yolo to remove, abate, and prevent the reoccurrence of the public nuisance upon such land.

Such duty of an owner shall exist regardless of whether the owner is in actual possession of his or her real property, and may include an obligation to take action to evict or otherwise remove an occupier who creates a public nuisance upon the owner's property. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of State or federal law.

2. 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 nuisance to exist shall be personally liable for:
  - a. All costs incurred by the County, including, but not limited to, Abatement Costs 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. Any Administrative Penalty imposed pursuant to this Chapter. In the event that an Administrative Penalty is imposed on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the Administrative Penalty imposed. Payment of administrative penalties does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Notice. Payment of the administrative penalty does not bar the County from taking any other enforcement action regarding a violation that is not corrected.
3. Interest shall accrue on all amounts due under this Chapter, from the effective date of the decision to the date paid pursuant to the laws applicable to civil money judgments.
4. At such time as the information becomes known, the Enforcing officer shall make a demand for Abatement Costs and/or accrued Administrative Penalty by issuing an invoice to the owner(s) and/or occupant(s) of the Premises subject to enforcement action.
5. Whenever the amount of Abatement Costs incurred by the County to abate the nuisance, or the amount of any Administrative Penalty imposed pursuant to this Chapter has not been satisfied in full within ninety calendar days after service of the invoice, and/or 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, all or any part of, this obligation may constitute a lien against the real

property on which the violation occurred.

6. In addition to any other remedy, the County may prosecute a civil action through the Office of the County Counsel to collect any Abatement Costs and/or any Administrative Penalty imposed pursuant to this Chapter.

#### H. Lien Hearing.

At such time as Abatement Costs and/or Administrative Penalties due and owing have not timely been paid:

1. The Enforcing officer shall prepare and file a written report of Abatement Costs and/or Administrative Penalties ("Report"), itemized by property, with the Clerk of the Board of Supervisors stating, as applicable:
  - a. For each abatement carried out, the amount of all accrued Abatement Costs, and/or
  - b. For each accrued administrative penalty, the amount of delinquent administrative penalty.
2. Upon receipt of the Report, the Clerk of the Board of Supervisors shall serve a written Notice of Hearing on Report of Abatement Costs and/or Administrative Penalties.
3. At the time and date set for the lien hearing, the Board of Supervisors shall meet to review and consider the Report and any protests or objections to it.
4. At the conclusion of the lien hearing, the Board of Supervisors shall make such modifications to the Report as it deems necessary and thereafter shall adopt a resolution confirming, modifying, or discharging the lien amount. As part of the resolution, the Board of Supervisors may order that all or any part of the cost to abate the nuisance pursuant to this Chapter, including the Abatement Costs, as confirmed by the Board of Supervisors be placed upon the county tax roll by the County Auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the Government Code; provided, however, that the Abatement Costs, including 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.
5. The liens provided herein shall have no force and effect until recorded with the County Recorder. The Board of Supervisors may cause notices of abatement lien and/or notices of administrative penalty lien to be recorded

against the respective parcels of real property pursuant to section 25845 of the Government Code. Upon recordation, the Clerk of the Board of Supervisors shall serve, in the manner set forth in Section 5-20.11(A)(2), a copy of the recorded notice(s).

6. Within 30 calendar 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 Yolo County Recorder's Office.
7. Once recorded, any costs or penalties not specially assessed by the Board of Supervisors pursuant to this Section shall have the same 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.
8. Interest shall accrue on the principal amount of any lien remaining unsatisfied at the rate set forth in Civil Code section 685.010.
9. Once the County receives full payment for outstanding principal, penalties, and costs, the Clerk of the Board of Supervisors will record a notice of satisfaction. A fee shall be paid by the owner(s) and/or occupant(s) for processing the notice of satisfaction. 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. There shall be no right to trial by jury. The County shall be entitled to its attorneys' fees and costs.

#### H. Alternative Hearing Procedure.

If a hearing officer has been appointed in accordance with Section 5-20.11(D)(1) of this Chapter, the hearing officer is authorized to conduct the hearing required under paragraph (G) [Lien Hearing] above and shall prepare a recommended decision and resolution for the Board of Supervisors pursuant to Government Code sections 25845 and 27721. The recommended decision and resolution shall include any proposed modifications to the Report. The hearing officer shall promptly submit that recommendation and the administrative record to the Clerk of the Board of Supervisors. The Board of Supervisors may adopt the recommended decision and resolution without further notice of hearing, or may set the matter for a de novo hearing before the Board of Supervisors. In the event that the Board of Supervisors sets the matter for de novo hearing, such hearing shall be held in accordance with the provisions of paragraph (G) [Lien Hearing] above.

### **Section 5-20.12 Administrative Penalties.**

- A. In addition to any other remedies provided by County Code or state law, and all other costs, fees, penalties and expenses which may be assessed or imposed as a result of violation of this Chapter, any person who violates any provision of this Chapter, including the owner of the Premises, shall be liable and responsible for, and shall pay to the County the following penalties ("Administrative Penalties"), as determined by the Enforcing officer:
  - 1. Up to \$500 per plant, per day; or
  - 2. Up to \$25 per square foot of Garden canopy that exceeds the Garden canopy allowed by License or applicable law.
- B. Administrative Penalties shall begin accruing three days after date of service of a Notice and continue for each day that the violation continues.
- C. At the nuisance abatement hearing, the hearing officer shall determine the total amount of Administrative Penalties that have accrued as of the time of the hearing, and that amount shall be reflected in the decision and awarded to the County. If at the time of the hearing the nuisance has yet to be abated, the decision shall state that Administrative Penalties shall continue to accrue until the nuisance is abated.
- D. In determining the amount of the Administrative Penalty, the hearing 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 Administrative Penalty may be imposed via the administrative process set forth in this Chapter, 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.

### **Section 5-20.13 Summary abatement.**

- A. Notwithstanding any other provision in this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to the public health or safety, and where the procedures set forth in Sections 5-20.11 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 5-20.11(A) but the formal notice and hearing procedures set forth in this Chapter shall not apply. The County may recover its costs for abating that nuisance in the manner set forth in this Chapter.

- B. Without limitation to any other unlawful marijuana cultivation constituting an immediate threat to the public health or safety under this Section, marijuana cultivated in violation of Section 5-20.05(A)(1) of this Chapter is deemed an immediate threat to the public health or safety and may be summarily abated.

#### **Section 5-20.14 Non-exclusive remedy.**

This Chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

#### **Section 5-20.15 No Vested or Non-conforming Rights.**

Neither this Chapter nor any other provision of this code, or action, failure to act, statement, representation, certificate, approval, or license issued by the County or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana cultivation or other commercial marijuana activity.

#### **Section 5-20.16 Nursery and Processing Facilities; Distributor Licenses.**

- A. Notwithstanding any other provision of this Chapter, the Board of Supervisors may approve a Nursery License or a Processing License. By resolution or minute order, the Board of Supervisors shall establish the maximum number of Nursery Licenses and Processing Licenses that may be approved pursuant to this Section. The Board of Supervisors may increase or decrease the maximum number of such licenses from time to time in its sole discretion.
- B. The Board of Supervisors may approve a Nursery License or Processing License upon determining as follows:
  - 1. The applicant complied with all aspects of the competitive solicitation process undertaken by the County Administrator's Office in connection with Nursery and Processing facilities; and
  - 2. Issuance of the proposed license would not result in an exceedance of the maximum number of authorized Nursery or Processing facilities; and



3. The proposed license complies with all provisions of this Chapter relating to state and local agency approvals (excluding only the October 11, 2016 deadline for coverage under Regional Board Order No. R-5-2015-0113), location restrictions, and or applicable testing requirements; and
  4. Unless determined to be exempt, the application has been reviewed in conformance with the California Environmental Quality Act; and
  5. All aspects of the proposed license are consistent with the protection of public health, safety and welfare.
  6. If an applicant for a Nursery License or Processing License proposes a development agreement pursuant to Government Code Section 65864 et seq., all aspects of the content, review, and approval of the development agreement shall comply with applicable provisions of state law. Provisions of Title 8 of the Yolo County Code relating to development agreements, including but not limited to Chapter 5 thereof, shall not apply to development agreements proposed in connection with Nursery and Processing facilities.
    - a. The Board of Supervisors may approve a Distributor License if an applicant for a Nursery License or Processing License proposes a development agreement that includes a request for a Distributor License.
- C. Outside the competitive solicitation process undertaken by the County Administrator's Office in connection with Nursery and Processing facilities, the Board of Supervisors may approve a Distributor License upon determining as follows:
1. The applicant has submitted an application for a development agreement pursuant to the County's Early Implementation Development Agreements Policy, which application includes a request for a Distributor License that will solely support the business activities on that site and not serve other licensees; and
  2. The proposed license complies with all applicable provisions of state and local agency approvals; and
  3. All aspects of the proposed license are consistent with the protection of public health, safety and welfare.
- D. Following issuance, unless otherwise specified in an approved development agreement, all matters relating to the expiration, administration, renewal,

enforcement, and revocation of licenses under this Chapter shall apply to a Nursery License, Processing License or Distributor License.

**5-20.17 Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this Chapter or the application thereof is for any reason held to be unconstitutional or otherwise invalid by any final court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter.

**Section 5-20.18 Sunset Provision.**

- A. Repeal. This Chapter shall be automatically repealed and be of no further force or effect as of December 31, 2018 unless the Board of Supervisors submits a County tax on commercial marijuana activity to the voters on the June 2018 ballot, the voters approve the tax, and the tax is certified by the County pursuant to Section 15372 of the California Elections Code. Further, this Chapter shall be automatically repealed and be of no further force if such tax is thereafter successfully challenged and repealed or otherwise invalidated.
  
- B. Grace period. Notwithstanding a repeal pursuant to paragraph (A) above, Licensees may wind-down marijuana cultivation activities conducted pursuant to a License in effect and in good standing as of July 1, 2018, with no modifications to the nature, scope or location of the License, until the date specified below:
  - 1. Outdoor cultivation – December 31, 2018.
  - 2. Mixed-light cultivation – December 31, 2019.
  - 3. Indoor cultivation – December 31, 2020.
  - 4. Cultivation pursuant to a development or cultivation agreement approved by the Board of Supervisors – by the expiration date specified in the agreement.

**SECTION 4.** The Board of Supervisors hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the Ordinance is

categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment). The County Counsel is hereby directed to file a Notice of Exemption.

**SECTION 5.** The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect 30 days after passage.

**PASSED AND ADOPTED** by the Yolo County Board of Supervisors at its regular meeting on July 24, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTENTION:

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Oscar Villegas, Chair  
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk  
Yolo County Board of Supervisors

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Deputy (Seal)

Approved as to form:  
Philip J. Pogledich, County Counsel

By: \_\_\_\_\_  
Carrie Scarlata, Asst. County Counsel