

ORDINANCE NO. 1618

**AN URGENCY ORDINANCE OF THE COUNTY OF SUTTER AMENDING THE
SUTTER COUNTY ORDINANCE CODE BY AMENDING CHAPTER 410 RELATING
TO THE CULTIVATION OF MARIJUANA**

THE BOARD OF SUPERVISORS OF THE COUNTY OF SUTTER ORDAINS AS FOLLOWS:

SECTION 1. The Board of Supervisors of the County of Sutter, by at least four-fifths vote, hereby finds and declares the following:

(A) Chapter 410 of the Sutter County Ordinance Code is intended 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 Sutter.

(B) The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in Sutter County and elsewhere demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety. The previous provisions of Chapter 410, which allowed limited outdoor cultivation, did not fully mitigate these adverse effects.

(C) The indoor cultivation marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the residence or otherwise occupying the structure, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes. The previous provisions of Chapter 410, which did not restrict the structures in which marijuana may be cultivated, did not fully mitigate these adverse effects.

(D) Prohibiting the cultivation of marijuana outdoors or within a residence or other structure used or intended for human occupancy is proper and necessary to avoid the above-mentioned harms, and to protect the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Sutter.

(E) Due to unusual climatic and environmental conditions, the 2016 outdoor marijuana cultivation season is expected to start early, prior to the end of March. Consequently, outdoor marijuana plantings are imminently likely to occur within the next thirty days, before a non-urgency ordinance could take effect. Additionally, indoor cultivation within a residence or other structure used or intended for human occupancy may occur at any time, and the harm threatened by such cultivation is immediate.

(F) Adoption of the amendments made by this Ordinance without delay is necessary for the immediate preservation of the public peace, health, and safety, as set forth in Government Code section 25123, subdivision (d), in order to prevent further cultivation of marijuana outdoors or within residences or

other structures used or intended for human occupancy in Sutter County, which would threaten significant impacts on the public peace, health, and safety if permitted to occur.

(G) Adoption of such amendments immediately will further ensure that the prohibition of outdoor marijuana cultivation becomes effective early enough in the outdoor growing season to allow any marijuana plants previously planted outdoors to be transplanted to a permitted indoor structure by the grower, without undue hardship to medical patients and their caregivers eligible to cultivate marijuana in accordance with State law.

SECTION 2: The Sutter County Ordinance Code is amended by amending Chapter 410 to read, in its entirety, as follows:

Chapter 410

MARIJUANA CULTIVATION

SECTIONS:

410-010	Authority and Title
410-020	Findings and Purpose
410-030	Definitions
410-040	Nuisance Declared
410-050	Change in Land Use
410-060	Enforcement
410-070	Abatement by Owner of Occupant
410-080	Administrative Civil Penalties
410-090	Recordation
410-100	Liability for Costs
410-110	Accounting
410-120	Notice of Hearing on Accounting; Waiver by Payment
410-130	Hearing on Accounting
410-140	Modifications
410-150	Special Assessment and Lien
410-160	Enforcement by Civil Action
410-170	Summary Abatement
410-180	No Duty to Enforce
410-190	Remedies Cumulative
410-200	Other Nuisance
410-210	Compliance with Other Laws
410-220	Refusal to Issue Permits, Licenses or Other Entitlement
410-230	"Right to Farm" Not Applicable
410-240	Severability
410-250	Misdemeanor Penalty

410-010 AUTHORITY AND TITLE

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

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

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

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

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

(D) Health and Safety Code section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420. In *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704, the California Court of Appeal specifically held that "[n]either the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court concurred that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ."

(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 unique geographic and climatic conditions and sparse population in many areas of the county, provide conditions that are favorable to marijuana cultivation. Marijuana growers can achieve a high per-plant yield because of the county's favorable growing conditions.

(G) The unregulated cultivation of marijuana in the unincorporated area of Sutter County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the cultivation occurs outdoors, or 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 any amount of marijuana at locations or premises within one thousand (1,000) feet of schools, school evacuation sites, 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 and the person(s) cultivating the marijuana plants.

(I) 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.

(J) The cultivation of marijuana upon vacant lots (i.e., premises without a permitted residential use) presents a heightened risk of the harms that Chapter 410 was designed to prevent, including criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards, due to the absence of an onsite caretaker eligible to cultivate marijuana in accordance with State law. Marijuana cultivation upon vacant lots is more likely to violate the registration, setback, area limit, security, and location requirements of this Chapter than marijuana cultivated accessory to a permitted residential use, is more likely to be diverted to non-medical use, and is less likely to serve the legitimate needs of medical patients and their caregivers eligible to cultivate marijuana in accordance with State law. Limiting the cultivation of marijuana to premises that contain a permitted residential use is proper and necessary to avoid the above-mentioned harms, and to protect the health, safety, and welfare of the residents and businesses within the unincorporated territory of the County of Sutter.

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

(L) The original provisions of Ordinance No. 1586 have proven inadequate to control the negative secondary impacts of unregulated marijuana cultivation. Specifically:

(1) The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in Sutter County and elsewhere demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety. The previous provisions of Chapter 410, which allowed limited outdoor cultivation, did not fully mitigate these adverse effects. To adequately protect the public health, safety, and welfare, it is proper and necessary to prohibit the outdoor cultivation of marijuana within the unincorporated area of Sutter County.

(2) The indoor cultivation of marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the residence or otherwise occupying the structure, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes. The previous provisions of Chapter 410, which did not restrict the structures in which marijuana may be cultivated, did not fully mitigate these adverse effects.

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

(O) The Sutter County Board of Supervisors, in the exercise of its police powers, expressly declares that the cultivation of marijuana in violation of this Chapter, by its very existence, constitutes a nuisance per se and thus, no inquiry beyond its existence need be made including any inquiry as to whether such use pre-existed the adoption of this Chapter regardless of the intended use.

410-030 DEFINITIONS

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

(A) “Administrative Hearing Officer” means those individuals appointed by the Board of Supervisors pursuant to California Government Code Section 27720, et seq. for the purpose conducting hearings for the county. Said individuals shall be attorneys at law who have been admitted to practice before the courts of the State of California for at least five years prior to appointment. Administrative Hearing Officers shall be authorized to decide a matter upon which a hearing has been held pursuant to California Government Code Section 27721 and shall render a written decision, including any findings or conclusions required for that decision, and submit the decision and the record to the Clerk of the Board of Supervisors.

(B) “Child Care Center” means any county-licensed child care center, daycare center, or childcare home, or any preschool.

(C) “Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

(D) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.

(E) “Enforcing Officer” means the Development Services Director or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.

(F) “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).

(G) “Marijuana plant” shall have the meaning set forth in Health and Safety Code section 11018, et seq. and Business and Professions Code section 19300.5, et seq.

(H) “Notice of Violation” shall mean a written notice of the Enforcing Officer’s identification of one or more specific alleged violations of this Chapter which contains all of the information set forth in Section 410-060(B) of the Sutter County Ordinance Code.

(I) “Occupant” shall mean an adult tenant, occupant, resident or other person having possession, control, or any other ownership interest in or the right of access to the premises, excluding persons having only a security interest in the premises. There may be one or more occupants as to any particular premises.

(J) “Outdoor cultivation” shall mean any cultivation of marijuana that is not conducted within a detached fully enclosed secure accessory structure conforming to the requirements of Section 410-040, subdivision (E)(2).

(K) “Premises” shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “premises” for purposes of this Chapter.

(L) “Primary caregiver” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

(M) “Qualified patient” shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.

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

(O) “School Evacuation Site” means any location designated by formal action of the governing body, Superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of an emergency or other incident at the school.

(P) “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.

410-040 NUISANCE DECLARED

The following regulations shall apply to premises used for marijuana cultivation in the unincorporated area of Sutter County:

(A) Outdoor Cultivation: The outdoor cultivation of marijuana, in any amount or quantity, is hereby declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

(B) Prohibited Areas: The cultivation of marijuana, in any amount or quantity, upon any premises located within one thousand (1,000) feet of any school, school evacuation site, church, park, child care center, or youth-oriented facility is hereby declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter. Such distance shall be measured in a straight

line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school, school evacuation site, church, park, child care center, or youth-oriented facility is located.

(C) Residences: The cultivation of marijuana, in any amount or quantity, within a residence or any other structure used or intended for human occupancy is hereby declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

(D) Vacant Lots: The cultivation of marijuana, in any amount or quantity upon any premises is hereby declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless the premises contains a permitted residential use and is occupied on a full-time basis by at least one qualified patient and/or primary caregiver. For purposes of this subdivision, "permitted residential use" shall mean actual residential use of the premises that is conducted in a residential structure or manufactured home for which a final certificate of occupancy has been issued in accordance with Chapter 1300 of the Sutter County Ordinance Code.

(E) Cultivation: The cultivation of marijuana, in any amount or quantity, by its very existence, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter unless all of the following conditions are satisfied:

(1) Area Limitation: The cultivation of marijuana shall be conducted in a cumulative area totaling no more than eighty (80) square feet regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

(2) Structure: The cultivation of marijuana must be conducted within a detached fully enclosed secure accessory structure conforming to the following standards:

(a) The structure shall be a building completely detached from any residence or other structure used or intended for human occupancy. The structure shall comply with all of the requirements set forth in Chapter 1300 of the Sutter County Ordinance Code, and have a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments. The structure shall be secure against unauthorized entry, and accessible only through one or more lockable doors. Walls and roofs, excluding windows and skylights, must be constructed of solid materials such as two inch by four inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

(b) Any structure, regardless of square footage, constructed, altered or used for the cultivation of marijuana must obtain a building permit from the Development Services Department. The intended use of the structure for marijuana cultivation shall be disclosed in the application for a building permit, and the structure shall be inspected for compliance with this Chapter prior to the commencement of any cultivation. The conversion of any existing accessory structure, or portion thereof, for cultivation of marijuana shall be subject to these same permit requirements, and must be inspected by a representative of the Development Services Department for compliance with this Chapter prior to the commencement of any cultivation. Cultivation within any structure may not commence without final approval of the Development Services Department.

(c) The maximum electrical panel for the structure shall be sixty (60) amps. Except for temporary use in case of emergency power loss, the use of generators to supply power to any system or activity associated with marijuana cultivation is prohibited.

(d) Light systems utilized in connection with marijuana cultivation shall not exceed one thousand two hundred (1200) watts per fixture, shall comply with all applicable provisions of Chapter 1300 of the Sutter County Ordinance Code, and shall be shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure.

(e) The structure shall be equipped with odor control filtration and ventilation system(s) adequate to prevent marijuana plant odors from exiting the interior of the structure.

(f) The structure shall have locking doors and windows and each door shall be fitted with a dead bolt or similar locking type mechanism.

(g) Such structure shall be accessory to a permitted residential use in accordance with subdivision (C) of this section.

(h) As an alternative to the requirements set forth in paragraphs (a) through (g) above, the cultivation of marijuana may occur in a prefabricated greenhouse structure constructed for nursery or agricultural purposes which does not include any service systems and which has a floor area which does not exceed eighty (80) square feet. Said structure shall be located in an area which is fully enclosed by an opaque fence at least six (6) feet in height. The structure must also meet all applicable permit requirements and shall be secure against unauthorized entry and accessible only through one or more lockable doors. The frame must be constructed of metal and the panels must be polycarbonate or other similar material which is no less than four (4) mm thick. In the alternative, the structure may be a chain-link or wire mesh type greenhouse which is overlaid with a one-piece cover made of polyethylene laminate fabric or other similar material which is no less than eight (8) ml thick. The structure shall be equipped with an odor control filtration and ventilation system(s) adequate to prevent marijuana plant odors from exiting the interior of the structure. The structure and the ventilation system shall be inspected and approved by a representative of the Development Services Department prior to commencement of any cultivation. Cultivation within any structure which has not been inspected and approved by a representative of the Development Services Department is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

(i) Each structure in which the marijuana is cultivated shall comply with the setback requirements set forth in the Sutter County Zoning Code (Chapters 1500, 1510, 1515, 1520, 1525, and 1530 of the Sutter County Ordinance Code). Such setback distance shall be measured in a straight line from the structure in which the marijuana is cultivated to the boundary line of the premises.

(3) Annual Registration: The person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises to the Sutter County Development Services Department and provided all of the following current information and documentation to the department:

(a) The name of each person, owning, leasing, occupying, or having charge or possession of the premises;

(b) The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;

(c) A copy of the current valid medical recommendation or State-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver;

(d) A description of the structure and location of the eighty (80) square foot area in which the registrant proposes to cultivate the marijuana;

(e) If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel;

(f) Proof that a representative of the Development Services Department has inspected and approved the structure and the ventilation system and that any necessary permits have been obtained, work completed, and inspected by a representative of the Development Services Department; and,

(g) Proof of payment of the registration fee, the building inspection compliance fee, and any other applicable fee.

This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter or State law, or as otherwise required by law.

The Sutter County Development Services Department shall refuse to accept, or withdraw a previously accepted, registration for any premises upon which marijuana cultivation is being conducted, or is proposed to be conducted, in violation of this Chapter. The acceptance of a registration pursuant to this Chapter shall not be deemed or construed to be a permit for or approval of any violation of this Chapter. The acceptance of a registration shall not prevent the Enforcing Officer from thereafter withdrawing a previously accepted registration, requiring correction of violations, or from preventing marijuana cultivation being carried out thereunder when in violation of this Chapter.

Cultivation of marijuana in violation of this Chapter is hereby declared, by its very existence, to be unlawful and a public nuisance and thus, any registration accepted prior to the adoption of this ordinance which does not comply with the provisions of this Chapter, shall be revoked by the Enforcing Officer. Notice of such revocation shall be sent, by First-Class Mail, to the address listed on the accepted registration and shall become effective five (5) days after deposit in the U.S. Mail. Any cultivation existing after the effective date of the revocation is declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

The Board of Supervisors may, by resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

Every registration under this Chapter shall be valid for no more than one calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same manner as an initial registration hereunder. The registration will also be subject to, and conditioned upon, the fact that no school, school evacuation site, church, park, child care center, or youth-oriented facility is located within one thousand (1,000) feet of the registered cultivation site. If, during the term of the registration, it is determined that a school, school evacuation site, church, park, child care center, or youth-oriented facility is located within one thousand (1,000) feet of the registered cultivation, said registration shall be revoked by the Sutter County Development Services Department in accordance with the provisions of section 410-050.

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

410-050 CHANGE IN LAND USE

Any registration accepted by the Sutter County Development Services Department is subject to, and conditioned upon, the fact that no school, school evacuation site, church, park, child care center, or youth-oriented facility is located within one thousand (1,000) feet of the registered cultivation site. If, during the term of the registration, it is determined that a school, school evacuation site, church, park, child care center, or youth-oriented facility is located within one thousand (1,000) feet of the registered cultivation, said registration shall be revoked by the Sutter County Development Services Department. Notice of such revocation shall be sent, by First-Class Mail, to the address listed on the accepted registration and shall become effective five (5) days after deposit in the U.S. Mail. Any cultivation existing after the effective date of the revocation is declared, by its very existence, to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

410-060 ENFORCEMENT

Whenever the Enforcing Officer determines that a public nuisance as described in this Chapter exists on any premises within the unincorporated area of Sutter County, he or she is authorized to issue a Notice of Violation in accordance with this section.

(A) Inspection: When it is necessary to make an inspection to enforce the provisions of this Chapter, or when the Enforcing Officer has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of the sections of this Chapter, the Enforcing Officer may enter the building or premises at reasonable times to inspect or to perform duties imposed by this Chapter, provided that if such building or premises is occupied at the time of inspection, proper credentials shall be presented to the Occupant and entry shall be requested. If such building or premises is unoccupied, the Enforcing Officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and shall request entry to the building or premises. If entry is refused, the Enforcing Officer shall have recourse to every remedy provided by law to secure entry.

(B) Contents of Notice: The Notice of Violation shall:

(1) Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the County Assessor, and identify the Occupant(s), if other than the owner(s), and if known or reasonably identifiable.

(2) Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property.

(3) Identify such property by reference to the assessor's parcel number.

(4) Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the Enforcing Officer to be a public nuisance described in this Chapter.

(5) Describe the nature of the violation as well as the amount of the proposed administrative penalty and the reasons therefore.

(6) Notify the recipient(s) that they have five (5) days within which to abate the condition or a hearing will be held before an Administrative Hearing Officer appointed in accordance with this Chapter to determine whether there is any good cause as to why these conditions should not be abated and the proposed administrative penalty should not be imposed. The notice shall specify the date, time, and location of this hearing, and shall state that the owner or Occupant will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding:

(a) Whether the conditions existing on the property constitute a violation of this Chapter; and,

(b) Whether there exists any good cause as to why the proposed administrative penalty should be reduced or not imposed.

(7) Contain a statement that, if the recipient(s) fails to abate the condition, the Enforcing Officer will abate the condition and all costs associated with the violation, including administrative costs incurred, shall be the responsibility of the recipient(s) and may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

(8) Notify the recipient(s) that unless the recipient(s) abates the conditions prior to the scheduled hearing or shows good cause before the Administrative Hearing Officer as to why the proposed administrative penalty should be reduced or not imposed, the proposed administrative penalty shall be assessed and may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll. The notice shall also notify the recipient(s) that the daily administrative penalty shall be assessed in thirty (30) day increments and shall continue to accrue until such time as the recipient(s) proves, to the satisfaction of the Enforcing Officer, that such conditions have been abated.

(9) Notify the recipient(s) that failure of the person or persons to whom the notice was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.

(C) Service of Notice:

(1) The Enforcing Officer shall serve the Notice of Violation by posting a copy of the notice along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. If the property has a residence and the front door is accessible to the Enforcing Officer, one copy shall be posted on the front door. In no event shall fewer than two (2) copies of the Notice of Violation be posted on a property pursuant to this section. The Enforcing Officer shall also:

(a) Personally serve the owner and/or Occupant with a copy of the Notice of Violation; or

(b) Mail, by overnight mail or overnight courier service, a copy of the Notice of Violation to the Occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll; except that if the records of the County Assessor show that the ownership has changed since the last equalized assessment roll was completed, the Notice of Violation shall also be mailed to the new owner at his or her address as it appears in said records.

(2) The date of service is deemed to be the date of deposit in the mail or personal delivery, as applicable. The failure of any owner or Occupant to receive such notice shall not affect the validity of the proceedings.

(D) Administrative Hearing: Pursuant to Government Code sections 25845, subdivision (i), 27721 and 53069.4, the Administrative Hearing Officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice constitute a violation of this Chapter and whether there exists any good cause as to why the proposed administrative penalty should be reduced or not imposed. This hearing shall be held no less than five calendar days after service of the Notice of Violation.

(1) The Notice of Violation and any supporting documents shall be admitted into evidence and the Administrative Hearing Officer shall begin the hearing by reviewing those documents and addressing any questions which he or she may have to the Enforcing Officer.

(2) The owner or Occupant of the property shall then be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property subject to the notice constitute a violation of this Chapter and whether there exists any good cause as to why the proposed administrative penalty should be reduced or not imposed.

(3) In the event that the owner or Occupant does not appear and present evidence at the hearing, the Administrative Hearing Officer may base his or her decision solely upon the evidence submitted by the Enforcing Officer. Failure of the owner or Occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.

(4) 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 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.

(5) A continuance of a hearing under this Chapter shall be granted only upon a showing of good cause and only if the requesting party has filed with the Board Clerk, at least two calendar days prior to the scheduled hearing, a written request for a continuance together with affidavits or declarations detailing specific facts showing that a continuance is necessary. The Board Clerk shall forward the request and the supporting documents to all parties and the Administrative Hearing Officer assigned to the matter. The Administrative Hearing Officer shall consider the request on the date of the hearing and shall make a determination as to whether good cause exists for the continuance. If good cause is found to exist, the Administrative Hearing Officer may grant a continuance not to exceed three (3) business days and shall do so by issuing an order which shall be personally served on the owner(s) and/or Occupant(s) attending the hearing and shall be mailed, by overnight mail or overnight courier service, to any other parties upon whom the Notice of Violation was served. It shall also be personally served on the Enforcing Officer. If good cause is not found to exist, the request shall be denied and the hearing will proceed as scheduled.

(6) The Administrative Hearing Officer shall consider the matter de novo, and shall affirm, reverse, or modify the determinations contained in the Notice of Violation and shall affirm, reverse, or modify the proposed administrative penalty contained in the Notice of Violation. In considering the imposition of an administrative penalty, the Administrative Hearing Officer 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. If an administrative penalty is ordered, the order shall set forth an effective date of any such penalty. At the conclusion of the hearing, the Administrative Hearing Officer shall issue a written order, which shall include findings relating to: (a) whether the conditions existing on the property subject to the notice constitute a violation of this Chapter; and, (b) whether there exists any good cause as to why the

proposed administrative penalty should be reduced or not imposed. The order shall be personally served on the owner(s) and/or Occupant(s) attending the hearing and shall be mailed, by overnight mail or overnight courier service, to any other parties upon whom the Notice of Violation was served. It shall also be personally served on the Enforcing Officer. The order shall be final and conclusive when signed by the Administrative Hearing Officer and service shall be deemed complete on the date of service unless the order is mailed, by overnight mail or overnight courier service, in which case, service shall be deemed complete one day after mailing.

The Board of Supervisors may, by resolution, establish a fee for hearings conducted under this section in accordance with all applicable legal requirements.

(E) Abatement: If the owner or Occupant fails to abate any unlawful marijuana cultivation within three calendar days of the date of service of the order of the Administrative Hearing Officer, the Enforcing Officer may:

(1) Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the Enforcing Officer; or

(2) Apply to a court of competent jurisdiction for an inspection warrant and abatement order authorizing entry onto the premises for the purpose of locating, abating, seizing, transporting, and destroying marijuana which is being unlawfully cultivated on the premises.

If any part of the work is to be accomplished by private contract, that contract shall be prepared in accordance with Chapter 16 of the Sutter County Ordinance Code. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California.

(F) No person shall obstruct, impede or interfere with the Enforcing Officer or any other county employee, contractor or other authorized representative in the performance of code enforcement and nuisance abatement duties pursuant to this Chapter.

410-070 ABATEMENT BY OWNER OR OCCUPANT

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

410-080 ADMINISTRATIVE CIVIL PENALTIES

(A) In addition to any other remedy available, any nuisance as described in this Chapter may be subject to an administrative penalty of up to one thousand (\$1,000.00) dollars per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.

(B) In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the Enforcing Officer or the court shall provide for a reasonable period of time, not to exceed five calendar days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties. When a Notice of Violation has been issued, the five day

time period required by this section shall commence on the date of service of the Notice of Violation as set forth in Section 410-060(C)(2). The failure of any owner or Occupant to receive such notice shall not affect the commencement date of the five day time period.

(C) Acts, omissions, or conditions in violation of this Chapter that continue, exist, or occur on more than one day constitute separate violations on each day. A daily administrative penalty shall be assessed as of the effective date set forth in the order of the Administrative Hearing Officer. The administrative penalty shall be assessed in thirty (30) day increments and shall continue to accrue until such time as the owner and/or Occupant prove, to the satisfaction of the Enforcing Officer, that such conditions have been abated. Proof of abatement to the satisfaction of the Enforcing Officer shall operate as an affirmative defense to the imposition of any daily administrative penalty assessed after proof of abatement has been provided to the Enforcing Officer.

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

(E) The Enforcing Officer may commence the administrative process by including a notice of proposed administrative penalty in the Notice of Violation issued in accordance with Section 410-060 of this Chapter. The notice of proposed administrative penalty shall set forth the amount of the proposed administrative penalty and the reasons therefore. The notice shall also inform the recipient that a hearing will be held before a hearing officer appointed in accordance with this Chapter and specify the date, time, and location of this hearing. The notice shall be served in the manner set forth in Section 410-060(C). The failure of any owner or Occupant to receive such notice shall not affect the validity of the proceedings. Failure of the person or persons to whom the notice was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.

(G) At the conclusion of the hearing, the Administrative Hearing Officer shall impose, modify, or disapprove, in whole or in part, by written order, the proposed penalty set forth in the notice. The order shall include findings relating to whether there exists any good cause as to why the proposed administrative penalty should be reduced or not imposed. The order shall also set forth an effective date of the administrative penalty ordered. The order shall be personally served on the owner(s) and/or Occupant(s) attending the hearing and shall be mailed, by overnight mail or overnight courier service, to any other parties upon whom the notice was served. It shall also be personally served on the Enforcing Officer. The order shall be final and conclusive when signed by the Administrative Hearing Officer and service shall be deemed complete on the date of service unless the order is mailed, by overnight mail or overnight courier service, in which case, service shall be deemed complete one day after mailing. Payment of the first thirty (30) day administrative penalty assessment shall be made to the county within twenty days of service of the order, unless the owner and/or Occupant has provided proof, to the satisfaction of the Enforcing Officer, that such conditions have been abated or the administrative penalty assessment has been timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b). If the owner and/or Occupant has proven, to the satisfaction of the Enforcing Officer, that such conditions have been abated, payment of the prorated administrative penalty amount, as set forth in paragraph (C) above, shall be paid to the county within twenty days of service of the order. Payment of subsequent thirty (30) day administrative penalty assessments shall be paid to the county within twenty days of service of each subsequent assessment. The Enforcing Officer shall serve, by overnight mail or overnight courier service, notice of any subsequent thirty (30) day administrative civil penalty assessment to each individual upon whom the civil administrative penalty assessment has been imposed.

(H) 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.

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

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

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

(3) Prior to recording any such lien, the Enforcing Officer shall prepare and file with the Clerk of the Board of Supervisors a report stating the amounts due and owing. This report may be combined with the accounting prepared in accordance with Section 410-110 of this Chapter.

(4) The Clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it. This hearing may be combined with the hearing set in accordance with Section 410-130 of this Chapter.

(5) The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten (10) calendar 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. This notice may be combined with any notice prepared in accordance with Section 410-120 of this Chapter.

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

(7) At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount. This resolution may be combined with any order made pursuant to Section 410-150 of this Chapter.

(8) Within thirty 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 Sutter County Recorder's Office.

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

(10) The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. There shall be no right to trial by jury. The county shall be entitled to its attorney's fees and costs.

(J) 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.

(K) 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. The payment of administrative penalties does not bar the county from taking any other enforcement action regarding a violation that is not corrected.

410-090 RECORDATION

(A) Upon issuance of a Notice of Violation, the Enforcing Officer may record with the Sutter County Recorder a Notice of Pending Nuisance Abatement Proceeding. A Notice of Pending Nuisance Abatement Proceeding will describe the property and the condition in violation of this Chapter. The Notice of Pending Nuisance Abatement Proceeding shall be served, by regular mail, upon any party that was served with the Notice of Violation.

(B) If a Notice of Pending Nuisance Abatement Proceeding is recorded, the Enforcing Officer shall serve and record a Notice of Final Disposition when the nuisance abatement proceeding has been completed, including any hearings or appeals and the completion of any work necessary to abate the nuisance. If the work to abate the nuisance is performed at county expense, or if administrative penalties are imposed under this Chapter, the Notice of Final Disposition need not be issued until those costs and penalties have been paid or a lien for those costs and penalties has been recorded. The Notice of Final Disposition shall be served, by regular mail, upon any party that was served with the Notice of Violation.

410-100 LIABILITY FOR COSTS

(A) In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains the unlawful marijuana cultivation to exist shall be liable for all costs incurred by the county, including, but not limited to, administrative costs, recording fees, administrative hearing fees, 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;

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

410-110 ACCOUNTING

The Enforcing Officer shall keep an account of the cost of every enforcement proceeding carried out and shall render a report in writing, itemized by parcel, to the Clerk of the Board of Supervisors showing the cost of abatement and the administrative costs for each parcel. Notwithstanding the foregoing, when an owner and/or Occupant has abated the nuisance within five (5) days of receiving a Notice of Violation, the Enforcing Officer may elect to omit those costs from the account kept in accordance with this Chapter.

410-120 NOTICE OF HEARING ON ACCOUNTING; WAIVER BY PAYMENT

Upon receipt of the account of the Enforcing Officer, the Clerk of the Board of Supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than ten (10) calendar days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. Such hearing shall occur during a regularly scheduled meeting of the Board of Supervisors and may be placed and acted upon as part of the consent agenda. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the Enforcing Officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

410-130 HEARING ON ACCOUNTING

(A) At the time fixed, the Board of Supervisors shall meet to review the report of the Enforcing Officer. An owner may appear at said time and be heard on the question of whether the accounting, so far as it pertains to the cost of enforcing this Chapter and abating a nuisance upon the land of the owner, is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed.

(B) The report of the Enforcing Officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.

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

410-140 MODIFICATIONS

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

410-150 SPECIAL ASSESSMENT AND LIEN

The Board of Supervisors may order that the cost of abating nuisances pursuant to this Chapter and the administrative costs as confirmed by the Board of Supervisors be placed upon the County tax roll by the

County Assessor 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 cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to section 25845 of the Government Code.

410-160 ENFORCEMENT BY CIVIL ACTION

As an alternative to the procedures set forth in Sections 410-060 through 410-150, the County may abate the violation of this Chapter by the prosecution of a civil action through the office of the County Counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

410-170 SUMMARY ABATEMENT

Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Section 410-060 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the Enforcing Officer, in his or her sole discretion, 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 410-060, but the formal notice and hearing procedures set forth in this Chapter shall not apply. The County may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 410-110 through 410-150.

410-180 NO DUTY TO ENFORCE

Nothing in this Chapter shall be construed as imposing on the Enforcing Officer or the County of Sutter any duty to issue a Notice of Violation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the Enforcing Officer nor the County of Sutter shall be held liable for failure to issue a Notice of Violation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.

410-190 REMEDIES CUMULATIVE

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of State or Federal law nor shall it prevent the appropriate authorities of the County of Sutter from pursuing any civil, criminal, or administrative remedy deemed necessary or appropriate to gain compliance with the applicable provisions of this Chapter. The provisions of this Chapter are to be supplementary and complementary to all of the provisions of this code, State law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to bar or limit the county from seeking any remedy to which it may otherwise be entitled.

410-200 OTHER NUISANCE

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

410-210 COMPLIANCE WITH OTHER LAWS

As used in this Chapter, "permitted," "approved," "allowed," and similar terms shall mean only that the use or activity does not violate the Sutter County Ordinance Code. No provision of this Chapter, nor any document issued hereunder, shall be construed to authorize, legalize, allow, approve, or condone any activity that violates any provision of State or Federal law or this Code. Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or Federal law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the Sutter County District Attorney, the Attorney General of the State of California, or the United States of America.

410-220 REFUSAL TO ISSUE PERMITS, LICENSES OR OTHER ENTITLEMENT

(A) Refusal to Issue: No department, commission or employee of the county of Sutter vested with the duty or authority to issue or approve permits, licenses or other entitlements shall do so when there is an outstanding violation for which a Notice of Violation has been issued pursuant to this Chapter involving the premises to which the pending application pertains. The authority to deny shall apply whether the applicant was the Occupant or owner of record at the time of such violation or whether the applicant is either the current Occupant or owner of record or a vendor of the current owner of record pursuant to a contract of sale of the real property, with or without actual or constructive knowledge of the violation at the time he or she acquired his or her interest in such real property. Upon notification by the Enforcing Officer that such a violation exists, all departments, such commissions, and employees shall refuse to issue permits or licenses or entitlements involving the premises except those necessary to abate such violation.

(B) Rescission of Refusal to Issue: The refusal to issue shall be rescinded when the department, commission, or employee has been notified that all required work to abate the violation has been completed and has been approved by the Enforcing Officer.

(C) Waiver: The Enforcing Officer may waive the provisions of this section regarding refusal to issue if he or she determines such waiver to be required to allow necessary or desirable remedial, protective or preventative work.

410-230 "RIGHT TO FARM" NOT APPLICABLE

This prohibition on the outdoor cultivation of medical marijuana shall supersede the provisions of any other provision in the Sutter County Ordinance Code that defines or allows cultivation of crops or agricultural products to the extent that those provisions can be read in a manner inconsistent with this prohibition.

410-240 SEVERABILITY

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

410-250 MISDEMEANOR PENALTY

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

SECTION 3: Nothing in this ordinance shall be interpreted to mean that the County of Sutter's permissive zoning scheme allows any other use not specifically listed therein.

SECTION 4: If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 5: 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 Environmental Control Officer is hereby directed to file a Notice of Exemption.

SECTION 6: This Ordinance is an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety. Pursuant to Government Code section 25123, subdivision (d), this ordinance shall take effect immediately upon adoption by four-fifths of the Board of Supervisors, and prior to the expiration of fifteen (15) days from the adoption thereof shall be published at least one time in the Appeal-Democrat, a newspaper of general circulation in Sutter County.

PASSED AND ADOPTED this 22nd day of March, 2016, by the Sutter County Board of Supervisors, State of California, by the following vote:

AYES: Supervisors Sullenger, Flores, Munger, Whiteaker and LeVake

NOES: None

ABSENT: None


LARRY MUNGER, CHAIRMAN
BOARD OF SUPERVISORS


ATTEST:
DONNA JOHNSTON, CLERK

By: 
Deputy



FILED

MAR 23 2016

BOARD OF SUPERVISORS
DONNA M. JOHNSTON
Clerk of the Board
By:  Deputy