



ORDINANCE NO. 5067

AN ORDINANCE AMENDING the ban on medical cannabis dispensaries and the regulation of outdoor cultivation of medical cannabis for personal use in El Dorado County.

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 4999, adopted September 24, 2013, which added Section 130.14.250 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Distribution" is hereby entitled "Medical Cannabis Distribution" and amended to read as follows;

Section 2. Ordinance No. 5000, adopted September 24, 2013, which added Section 130.14.260 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Outdoor Medical Cannabis" is hereby entitled "Outdoor Medical Cannabis Cultivation for Personal Use" and amended to read as follows:

**ARTICLE 9 - MISCELLANEOUS
CHAPTER 130.14 – MEDICAL CANNABIS**

Sec. 130.14.250 – Medical Cannabis Distribution.

1. *Findings.*

- A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- B. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996" ("CUA").

- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under state law for specific crimes involving the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from the proliferation of medical cannabis dispensaries and large-scale cultivation within local jurisdictions.
- D. On January 1, 2004, SB 420, the Medical Marijuana Program Act (“MMPA”), went into effect. The MMPA was enacted by the California Legislature to clarify the scope of the Compassionate Use Act of 1996. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. The MMPA included a list of facilities that could qualify as “primary caregivers” and dispense cannabis to qualified patients. The only facilities the Legislature authorized to serve as “primary caregivers” are licensed clinics, health care facilities, residential care facilities, home health facilities, and hospices which provide medical care and medical support services to qualified patients (Health and Safety Code Section 11362.7(d)(1)).
- F. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of cannabis even if the cultivation or use complied with state law.
- G. In 2015, the state implemented the Medical Cannabis Regulation and Safety Act (“MCRSA”), which implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).
- H. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation was under MCRSA for medicinal cannabis and Proposition 64, which enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”), for nonmedicinal cannabis.
- I. Health and Safety Code Section 11362.83 and Business and Professions Code Section 26200 preserve the authority of local governments to enact local ordinances regulating cannabis. Pursuant to Business and Professions Code Section 26055, state licensing authorities cannot approve an application for a state commercial cannabis license if the applicant is not in compliance with all applicable local ordinances or regulations.
- J. Citizens and law enforcement officers have reported an increase in crimes, such as loitering, and an increase in traffic, odor, and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of cannabis from dispensaries, in the areas immediately surrounding such medical cannabis dispensaries.
- K. Law enforcement officials have indicated that they could more effectively prosecute the illegal operation of dispensaries if the prohibition on medical cannabis dispensaries was more clearly stated in the zoning ordinance contained in this title.

2. *Facilities.*

- A. *Purpose.* The purpose of this section is to clearly set forth the prohibition on medical cannabis distribution facilities.
- B. *Medical cannabis distribution facility defined.* Except where the context otherwise requires, a “medical cannabis distribution facility” means any medical cannabis dispensary, collective, or cooperative, in any facility or location, whether fixed or mobile, and whether or not the facility is operated for profit, where medical cannabis, in any form, is made available, sold, transferred, given, or otherwise provided to three or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code Section 11362.7.
- C. *Exception.* A “medical cannabis distribution facility” shall not include a primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than three specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the Health and Safety Code, provided that any cannabis cultivating, drying, curing, processing, and storing complies with section 130.14.260.
- D. *Medical cannabis distribution facilities prohibited.* The establishment, maintenance, or operation of any medical cannabis distribution facility shall be prohibited, and no use permit, variance, building permit, or any other applicable entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical cannabis distribution facility. The County, however, shall not enforce the provisions of this section with respect to medical cannabis distribution facilities that were existing for at least six months prior to October 30, 2011 and that, no later than January 31, 2018, apply for a state license and submit documentation to the County Planning and Building Department demonstrating all of the following:
 - 1. Location within a commercial zone district;
 - 2. Continuous operation for a period of at least six months prior to October 30, 2011 and continuous operation since October 30, 2011;
 - 3. Compliance with state law;
 - 4. A detailed description of the full operations of the facility, including the hours of operation and the number of employees; and
 - 5. Any other information requested by the County Planning and Building Department.Those operations submitting documentation that the County finds satisfactory will be allowed to continue to operate without any expansion and at the same level of intensity with the same square footage as existed on October 30, 2011, subject to reasonable conditions and regulations, including conditions on time of use, as may be established by the County.

Nothing in this section or the County's authorization under Business and Professions Code Section 26055(g) of these limited distribution facilities shall provide those distribution facilities with the ability to continue operating and the County may, at a future date, ban all commercial cannabis distribution facilities at which time any state license would be subject to revocation under Business and Professions Code Section 26200(c).

- E. *Zoning; shared facilities.* A medical cannabis distribution facility as defined in Subsection 2.B of this section shall not be established, operated, or maintained at any location in any zone district in the unincorporated areas of the County, even if the medical cannabis distribution facility is located within or operated with one or more additional otherwise permitted use, including, but not limited to: a health food store, bakery, tobacco shop, other retail store, health education facility, health spa, fitness facility, wellness center, or a health facility other than a licensed facility identified in Subsection 2.C of this section.
- F. *Penalties.*
1. Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns the property upon which a medical cannabis distribution facility is located or owns or operates a medical cannabis distribution facility or otherwise violates any of the provisions of this section shall be guilty of a misdemeanor or infraction at the discretion of the district attorney.
 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$500.00 for each additional violation within one year. Such person, firm, partnership, association, corporation, or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
 3. In addition to the above, enforcement of this section shall be subject to the provisions of Chapters 130.12 and 9.02. Any violation of this section shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law, including but not limited to Chapter 9.02. Enforcement of this section under Chapter 9.02 shall be subject to the increased fines and expedited deadlines of section 130.14.260(2)(I) for each and every day, or portion of a day, that a violation exists.
 4. All County officers with authority to enforce this Code shall also have the authority to enforce this section.
 5. The remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

- G. *Section declarative of existing law.* Except as otherwise provided herein, nothing in this section shall be construed to legalize any existing dispensaries, collectives, cooperatives, or other facilities currently operating in the County, whether they are operating with or without a business license.

3. *Severability.*

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Sec. 130.14.260 - Outdoor Medical Cannabis Cultivation for Personal Use.

1. *Findings.*

- A. In 1970, Congress enacted the Controlled Substances Act (“CSA”) which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.
- B. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled “The Compassionate Use Act of 1996” (“CUA”).
- C. The intent of the CUA was to enable seriously ill persons who need medical cannabis for specified medical purposes to obtain and use cannabis under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of cannabis for specified medical purposes. The CUA did not address land use, zoning, or building code impacts or issues that arise from cannabis cultivation within local jurisdictions.
- D. On January 1, 2004, SB 420, the Medical Marijuana Program Act (“MMPA”), went into effect. The MMPA was enacted by the California Legislature to clarify the scope of the Compassionate Use Act. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. In 2015, the state implemented the Medical Cannabis Regulation and Safety Act (“MCRSA”), which implemented AB 243, AB 266, and SB 643 and was subsequently modified in 2016 by budget trailer legislation (SB 837).
- F. On June 27, 2017, as part of budget trailer legislation (SB 94), the state enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which generally synthesized the regulation and licensing of cannabis. Prior to SB 94, regulation was under MCRSA for medicinal cannabis and Proposition 64, which

enacted the Control, Regulate and Tax Adult of Marijuana Act (“AUMA”), for nonmedicinal cannabis.

- G. Health and Safety Code Section 11362.83 and Business and Professions Code Section 26200 preserve the authority of local governments to enact local ordinances regulating cannabis. Pursuant to Business and Professions Code Section 26055, state licensing authorities cannot approve an application for a state commercial cannabis license if the applicant is not in compliance with all applicable local ordinances or regulations.
- H. The County zoning ordinance contained in this title currently does not make any distinction between the cultivation of medical cannabis and the cultivation of any other agricultural crop or landscaping; the zoning ordinance contained in this title does not contain any explicit regulations governing the cultivation of medical cannabis.
- I. The cultivation of cannabis has the potential for increased crime, intimidation, and threats. As cannabis plants mature, certain varieties can develop a strong odor that creates an attractive nuisance by alerting people to the location of valuable cannabis plants; this creates an increased risk of crimes including burglary, trespassing, robbery, and armed robbery. Law enforcement officers have reported an increase in calls from reported respiratory problems and allergic reactions to cannabis plants.
- J. Unlimited area for cannabis cultivation exceed the amounts reasonably grown to serve as medical cannabis for residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations.
- K. The unregulated use of pesticides, fungicides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water. The use of pesticides in the cultivation of cannabis also poses a threat not only to the users of the cannabis, but to consumers of agricultural crops grown in proximity to the cannabis. Under Business and Professions Code Section 26060, the Department of Pesticide Regulation is required to develop guidelines for the use and application of pesticides in the cultivation of cannabis and residue in harvested cannabis.
- L. Standards are necessary to deter increased criminal activity resulting from the visibility of cannabis plants and to protect adjacent property owners and residents who find the odor of mature cannabis plants offensive; the standards will limit incompatible uses on smaller lots and protect the public safety and welfare.
- M. Given the increasing viability of growing cannabis to maturity in moveable containers or harvesting plants during the enforcement process, expedient enforcement of violations under this section is necessary to achieve compliance while ensuring a fair and adequate process.
- N. Since enactment, criminal enforcement of this Chapter has not proved successful and an effective civil code enforcement system that accounts for the unique circumstances and cash value of cannabis cultivation is necessary.

2. *Cultivation.*

- A. *Purpose.* The purpose of this section is to regulate with zoning standards the outdoor cultivation of medical cannabis for personal, non-commercial use by authorized individuals under existing state law while protecting the health, safety, and welfare of adjacent property owners, minimizing law enforcement effort, limiting availability of and exposure to cannabis by the youth of El Dorado County, and protecting the environment and public resources.
- B. *Definitions.* As used in this section, the following terms and phrases shall have the meaning ascribed to them as follows, unless the context in which they are used clearly suggests otherwise:

Child care center means any licensed child care center, daycare center, childcare home, or preschool.

Church means a structure or leased portion of a structure that is used primarily for religious worship and related religious activities.

Cultivation or *cultivating* means the planting, growing, or harvesting of one or more cannabis plants or any part thereof.

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

Medical or medicinal cannabis means cannabis grown for personal medicinal use by a person with a cannabis identification card under Health and Safety Code Section 11362.71, a qualified patient, or a primary caregiver as contemplated by Health and Safety Code Section 11362.7(d) and Business and Professions Code Section 26033(b).

Outdoor cultivation means cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors. For purposes of this section, cultivation within a greenhouse or hoop house shall be considered outdoor cultivation.

Premises means 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 section.

Primary caregiver means an individual designated by a patient who has consistently assumed responsibility for the housing, health, or safety of that patient and includes a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Health and Safety Code Section 11362.7(d).

Qualified patient shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

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 does not include a home school or vocational or professional institution of higher education, including a community or junior college, college, or university.

School bus stop means any location designated in accordance with California Code of Regulations, Title 13, Section 1238, to receive school buses, as defined in Vehicle Code Section 233, or school pupil activity buses, as defined in Vehicle Code Section 546.

Youth-oriented facility means any facility that caters to or provides services primarily intended for minors.

C. *Nuisance declared.* Any violation of this section is hereby declared to be a public nuisance. The outdoor cultivation of cannabis plants is also declared to be a public nuisance and is prohibited in all zone districts, except as provided in Subsection 2.D of this section.

D. *Cultivation standards.*

1. *Size of outdoor cultivation area.* Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical cannabis for personal use. The maximum area on a premises that may be used for the outdoor cultivation of medical cannabis shall be as follows:

- a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet;
- b. Lots zoned RE and RL: 400 square feet;
- c. Lots zoned AG, FR, LA, and PA: 600 square feet.

The cultivation of more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection 2.E of this section.

The area of cultivation shall be measured from the outside edge of the stems of the plants on the perimeter of the cultivation area and shall include the space between the plants. The minimum width of a cultivation area shall be five feet.

2. *Screening.* Medical cannabis shall be screened from public view so that no part of a plant can be seen from an adjacent street or adjacent parcel. Screening shall be accomplished by use of a greenhouse or hoop house or by fencing or vegetation. All greenhouses, hoop houses, and fences shall comply with all building and zoning codes and any other applicable law or regulation. Greenhouses and hoop houses are the preferred means of screening.

3. *Security.* Areas where medical cannabis is cultivated, the premises on which medical cannabis is cultivated, or a portion thereof that includes the cultivation area shall be secured by a minimum six-foot high solid wood or chain link fence with locked gates built in compliance with building and zoning codes. A chain link fence is not sufficient for screening.

4. *Distance from youth-oriented facilities.* The outdoor cultivation of medical cannabis shall be located a minimum of 1,000 feet from any school, school bus stop, church, park, child care center, or youth-oriented facility.
 - a. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.a or b of this section, the distance shall be measured in a straight line from the boundary of the premises on which the medical cannabis is cultivated to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
 - b. If the premises on which medical cannabis is cultivated is in a zone listed in Subsection 2.D.1.c of this section, the distance shall be measured in a straight line from the fence required in Subsection 2.D.3 of this section to the boundary of the premises on which the school, school bus stop, church, park, or youth oriented facility is located.
5. *Setbacks.* The cultivation area set forth in Subsection 2.D.1 of this section shall be set back from all property lines no less than the following:
 - a. Lots zoned R1, R20,000, R1A, R2A, and R3A: 50 feet;
 - b. Lots zoned RE, RL, AG, FR, LA, and PA: 100 feet.
6. *Residency.* The primary place of residence for persons engaging in the outdoor cultivation of medical cannabis shall be the premises on which the medical cannabis is cultivated. For collective cultivation as provided in Subsection 2.E of this section, the premises on which the medical cannabis is cultivated shall be the principal primary residence of at least one of the persons for whom the medical cannabis is being cultivated. Only those premises with a permitted dwelling unit shall be used for the outdoor cultivation of medical cannabis.
7. *Property owner authorization.* If a person cultivating medical cannabis on any legal parcel is not the legal owner of the parcel, such person shall obtain the written permission (including notarized signatures) of the legal owner consenting to the cultivation of medical cannabis on the parcel. Cultivation by a non-owner in the absence of notarized written permission constitutes a violation of this section.
8. *Environmental requirements.*
 - a. All persons engaging in the cultivation of medical cannabis shall:
 1. Have a legal water source on the premises;
 2. Not engage in unlawful or unpermitted surface drawing of water for such cultivation;
 3. Not allow illicit discharges of irrigation or stormwater from the premises;
 4. Not allow the off-site drift or discharge of chemicals;
 5. Not use any pesticide, fungicide, or fertilizer that has been banned for use in the County or state or that violates the pesticide laws and regulations as

enforced by the Department of Pesticide Regulation and the County agricultural commissioner under the authority of the California Food and Agriculture Code section 11501.5; and

6. Not allow the discharge of sediment from the site or the degradation of water quality of any water body.
 - b. The premises where the cultivation of medical cannabis takes place shall either be connected to a public sewer system or have a County inspected and approved sewage disposal system.
 - c. Persons engaging in the cultivation of medical cannabis shall use, dispose, and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements.
9. *Disposal of waste material.* Cannabis waste material shall be disposed of in accordance with existing state and local laws and regulations at the time of disposal. Burning of medical cannabis waste material is prohibited.
10. *Contact information.* The names, contact information, doctor's recommendation for each person cultivating or participating in the cultivation of cannabis on the premises, and the doctor's name and contact information, along with the patient's medical cannabis identification number or card, if applicable, shall be posted at the site of cultivation and made available to enforcement personnel at the time of inspection.
11. *Odor.* The cultivating, drying, curing, processing, and storing of medical cannabis shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which medical cannabis is cultivated due to dust, noise, smoke, or odors that are disturbing to people of normal sensitivity. Any cannabis odor shall not be equal or greater than a 7 dilution threshold ("DT") when measured by the County with a field olfactometer at the property line on which the cannabis is cultivated for a minimum of two olfactometer observations not less than fifteen minutes apart within a one hour period ("7 DT one hour"). If the odor from cannabis cultivating, drying, curing, processing, or storing violates this subsection, the County will notify the responsible person and that person must reduce the odor below the 7 DT one hour at property line threshold within the time required by the County. The County may require or suggest the installation of one or more odor control options, which may include but are not limited to the use of a greenhouse or hoop house that includes activated carbon filtration or equivalent odor abatement control equipment on the air exhaust, increasing the required setback, growing fewer plants, or growing only low odor cannabis strains. Installation of certain odor control options may require a permit. Any such notice requiring the use of one or more odor control options will provide a deadline for completion and the dilution threshold will be retested upon expiration of that deadline. The continued odor in excess of 7 DT one hour upon retesting will constitute a violation of this Chapter subject to enforcement and abatement.

12. Once harvested, cannabis shall only be dried, cured, processed, or stored in a greenhouse, hoop house, shed, garage, residence, or other fully enclosed structure. Equipment used for drying, curing, or processing cannabis may require a permit.
- E. *Collective cultivation.* Notwithstanding the restrictions on the establishment of a medical cannabis distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical cannabis for their personal use provided such cultivation is conducted consistent with the standards set forth in Subsection 2.D of this section, and as provided below:
 1. The area of cultivation permitted in Subsection 2.D.1 of this section shall not exceed 200 square feet per person participating in the collective cultivation activity. Each person's plants or area of planting shall be clearly marked to identify the individual who is responsible for those plants.
 2. All persons participating in the collective cultivation shall be residents of the County.
- F. *“Right to farm” not applicable.* This prohibition on the outdoor cultivation of medical cannabis shall supersede the provisions of the right to farm ordinance in Section 130.40.290 and any other provision in this 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.
- G. Reserved.
- H. *Criminal Enforcement.*
 1. Any person, firm, partnership, association, corporation, or other entity, whether as principal agent, employee, or otherwise, who owns or is a tenant upon the property upon which medical cannabis is cultivated outdoors, except as provided in Subsection 2.D of this section, or owns the medical cannabis that is cultivated or otherwise violates any of the provisions of this section can be charged with a misdemeanor.
 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County jail for a term not exceeding six months or by both such fine and imprisonment. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
- I. *Administrative Enforcement and Abatement.*
 1. In addition to criminal enforcement, a violation of this section shall be deemed a public nuisance and shall be subject to enforcement as provided herein and the provisions of Chapters 130.12 and 9.02. Pursuant to section 9.02.020(B), the higher fines of this section shall control in any administrative enforcement action.
 2. A notice to correct or notice to abate issued under Chapter 9.02 shall provide 72 hours for the responsible person to correct or abate the violation and shall identify

the administrative fines of this section if the violation is not corrected or abated within 72 hours.

3. For any violation not corrected within the 72-hour notice to correct, an administrative fine of \$500 per day, per violation will accrue for each and every day, or portion of a day, that a violation exists. Once a notice to abate is issued and the time to abate provided in the notice has expired or a decision of a Hearing Officer requires abatement and the time to abate provided in the decision has expired, the fine shall increase to \$1,000 per day, per violation for each and every day, or portion of a day, that a violation exists. Each plant cultivated in violation of this section or cultivated outside the square footage provided for in this section shall be deemed a separate violation. For a second violation within the 12-month period commencing from the date of a prior administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$2,500 per day, per violation for each and every day, or portion of a day, that a violation exists. For a third violation within the 12-month period commencing from the date of the first administrative citation by the same person or on the same premises if the property owner remains the same, the administrative fine shall be \$5,000 per day, per violation for each and every day, or portion of a day, that a violation exists.
4. Notwithstanding section 9.02.390, a request for an administrative hearing under Chapter 9.02 must be made within three days of service of the notice to correct, administrative citation, or notice to abate and the hearing shall be held within five days of the request for a hearing.
5. The decision of the Hearing Officer under section 9.02.440 shall be issued within five days of completion of the hearing.
6. A notice to abate or decision of a Hearing Officer requiring abatement shall provide that, if any plants cultivated under this section are removed as part of the abatement action because they are in excess of the allowable square footage, the responsible person may decide which plants will remain so long as the remaining plants are in compliance with this section. The notice to abate shall require the responsible person to identify the plants to remain within the 72-hours provided in the notice to abate or the time provided for in the decision by the Hearing Officer. If the responsible person does not identify the plants to remain in writing within the time provided, the enforcement official shall determine, in his or her sole discretion, which plants will remain.
7. Unless a notice is personally served, any notice provided under this section shall be mailed under section 9.02.120 and posted conspicuously on or in front of the residence, cultivation site, or other place reasonably anticipated to provide notice to the responsible person.
8. The remedies provided herein are cumulative to all other administrative, civil, and criminal remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or criminal activity.

- J. *Administrative relief.* Any person who cannot comply with the provisions of this section due to undue hardship and unique circumstances applying to the property on which outdoor medical cannabis is cultivated or is proposed to be cultivated, may apply for administrative relief. The relief process shall be as follows:
1. A written request for a finding of undue hardship shall be submitted to the Chief Administrative Officer or his or her designee. The request shall include the reasons that the standards provided herein cannot be met and how that creates a hardship.
 2. The Chief Administrative Officer or designee shall approve or disapprove the request for administrative relief and provide notice of the action to the property owners immediately adjacent to the subject property, Code Enforcement, and the County Sheriff, together with notice that the action may be appealed. The Chief Administrative Officer may expand the notice at his or her discretion based on the type of relief requested and the potential effects on nearby property.
 3. An appeal of the Chief Administrative Officer's action may be filed as provided in section 130.52.090 except that any appeal shall be heard by the Board of Supervisors and may be filed within one year of the Chief Administrative Officer's action.
 4. The Chief Administrative Officer may refer the matter to the Board of Supervisors at his or her discretion.
 5. The Chief Administrative Officer or designee shall provide notice of the final decision on a request for administrative relief to Code Enforcement and the Sheriff. Additionally, should a request for administrative relief be granted, the applicant shall post documentation of such relief at the site of the cultivation and make such documentation available to enforcement personnel at the time of inspection.
- K. *No authorization, defense, or immunity.* Nothing herein shall confer on any person the right to maintain a public or private nuisance or to authorize or facilitate any violation of state or federal law. Except for enforcement actions arising out of this section, no provision of this section shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person. Nothing in this section shall be construed to authorize or facilitate the cultivation or use of cannabis for non-medical purposes or to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under state or federal law.
- L. *No duty to enforce.* Nothing in this section shall be construed as imposing on the Sheriff, the District Attorney, or the County any duty to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation. Furthermore, the Sheriff, District Attorney, County, and any of their officers or employees shall not be held liable for failure to abate any unlawful cannabis cultivation, to prosecute a violation of this section, or to take any other action with regard to any unlawful cannabis cultivation.

3. *Severability.*

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Pursuant to California Government Code section 25123, this ordinance shall become effective 30 days from the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 7th day of November, 2017 by the following vote of said Board:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Kyza Schaufenberg
Deputy Clerk

Ayes: Hidahl, Veerkamp, Frentzen, Novasel,
Ranalli

Noes: None

Absent: None

Shiva E. Frentzen
Shiva Frentzen, Chair, Board of Supervisors

**APPROVED AS TO FORM
MICHAEL J. CICOZZI
COUNTY COUNSEL**

By: Bre Moebius

Breann M. Moebius
Deputy County Counsel



ORDINANCE NO. 5067

AN ORDINANCE AMENDING administrative code enforcement in El Dorado County.

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 9.02 of the El Dorado County Code, entitled "Code Enforcement," is hereby amended to read as follows:

CHAPTER 9.02 – CODE ENFORCEMENT

ARTICLE I. - IN GENERAL

Sec. 9.02.010. - Declaration of purpose.

- A. The Board of Supervisors (hereinafter referred to as "the Board") finds that the enforcement of this Code ("Code") throughout the County is an important public service, and enforcement of the Code is vital to the protection of the public's health, safety, and quality of life. The Board finds that enforcement starts with the implementation of regulations that can be applied fairly and evenly in administrative enforcement hearings and appeals before the Board. The Board further finds that a comprehensive code enforcement system requires a variety of administrative remedies for the effective enforcement of violations of the Code. The procedures established in this chapter shall be in addition to any civil or any other legal remedy established by law, which may be pursued to address violations of the Code.
- B. The Board also finds that there is a need to establish uniform procedures for administrative enforcement hearings conducted pursuant to the Code. It is the purpose and intent of the Board to establish uniform minimum procedural requirements for administrative enforcement and adjudication procedures for the Code and to provide for an administrative hearing and appeal process for both code enforcement and vehicle abatement cases.

Sec. 9.02.020. - Conflict of ordinances.

- A. The operation of this chapter shall in no way change or diminish the application of other ordinances in this Code dealing with like or similar matters.
- B. In any case where a provision of this chapter is found to be in conflict with a provision of any zoning, building, fire safety, or health ordinance or any other section of the Code, including fines, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.
- C. It is not intended by this chapter to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or ordinances or with private restrictions placed upon property by covenant, deed, or other private agreement except those specifically repealed by this chapter.
- D. In cases where two or more provisions of this or any other chapter conflict, the most stringent or restrictive shall prevail.

Sec. 9.02.030. - Administrative enforcement authority.

- A. The Enforcement Official shall have the authority and powers necessary to determine whether an administrative violation of the Code exists and the authority to take appropriate action to gain compliance with the provisions of the Code. The Enforcement Official shall further have authority to issue notices to correct, administrative citations, notices and orders, the power to inspect public and private property, and use the administrative remedies that are available under the Code.
- B. No Code Enforcement Officers shall carry any firearm in the performance of his or her duties.

Sec. 9.02.040. - Definitions.

As used in this chapter, unless the context otherwise requires, the words and terms defined herein have the meanings ascribed to them as follows:

Cost of abatement includes cost of staff time based on weighted salary consisting of base pay plus benefits; actual cost of mobilization, removal, disposal, and/or storage of offending personal property; and actual cost to repair or abate hazardous conditions.

Enforcement Official means the Sheriff, Fire Chief, Code Enforcement Officers, Chief Administrative Officer, Director of the Planning and Building Department, Director of the Environmental Management Department, or their authorized designee(s).

Hearing Officer means any person appointed by the Board to conduct any hearing or proceeding under the provisions of this chapter, including, without limitation, the administration of oaths, the receipt of evidence, and the entry of findings of fact and law.

Junk means, and is not limited to, trash, refuse, paper, glass, cans, bottles, rags, ashes, yard waste as defined in chapter 8.42, solid waste or refuse as defined in section 8.42, other salvageable materials, and litter as defined in chapter 8.42; inoperable appliances, parts, and tools; inoperable and unregistered vehicles, vehicle parts, and vehicle hulks; discarded furniture; dirt, rocks, and materials from the demolition, alteration, or construction of buildings or structures, unless such dirt, rocks, or other materials from demolition, alteration, or construction are being used for purposes of fill.

Junkyard means the use of any portion of any lot for the storage of junk, including scrap metals or other scrap materials or for the dismantling or wrecking of automobiles or other vehicles or machinery whether for sale or storage.

Public nuisance. A public nuisance shall consist of one or more of the following:

- A. Anything injurious or likely to become injurious to health or safety, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, including a condition of visual blight; or unlawfully obstructing the free passage or use, in the customary manner, of any public park, square, street, or highway. Enumeration of such nuisances in this chapter shall not be deemed exclusive.
- B. A swimming pool, pond, or other body of water which is abandoned, unattended, unfiltered, or otherwise un-maintained, wherein the water becomes polluted by bacterial growth, algae, remains or nesting sites of insects or deceased animals or reptiles, rubbish, refuse, debris or other foreign matter, thereby creating an unhealthy, unsafe, or unsightly condition.
- C. Any violation of the California Building Code, California Fire Code, California Housing Code, California Plumbing Code, California Mechanical Code, National Electrical Code, or any other applicable law.
- D. Any accumulation of junk, debris, or inoperable vehicles on any parcel of land.
- E. Any occupancy of any structure in a manner other than that for which it was originally approved.
- F. Any violation of the provisions of this chapter or other chapter where enforcement is provided for pursuant to this chapter and a violation of the chapter is declared to be a nuisance.

Unless this chapter or any other chapter declares that a violation is deemed to be a nuisance, abatement by the County under this chapter may not proceed unless and until the condition or activity is declared to be a nuisance through a noticed hearing before the Board, a Hearing Officer under this chapter, or by a court of competent jurisdiction.

Responsible person means an owner, tenant, occupant, lessor, manager, licensee, or other person having control over a structure or parcel of land or, to the fullest extent allowed by law, the parent or legal guardian of any person under 18 years who have done any act for which a penalty may be imposed under this chapter, or any other person required to comply with the provisions of the Code and, in the case where the demolition of a structure is suggested as a

means of abatement, any other lien holder, secured party, or other person who has properly recorded a security interest or other appropriate document evidencing an interest in the property, which has been recorded in the official records of the County.

Visual blight means any deteriorated, unreasonable, or unlawful condition or use of premises, which by reason of its appearance is detrimental to the property of others and detracts from the general standards of the neighborhood or the community; or which would be viewed by a person of reasonable sensibilities as offensive.

Sec. 9.02.045. - Prohibition.

- A. It is unlawful for any person, owner, occupant, tenant, or operator to cause or maintain a public nuisance on a premises.
- B. To the fullest extent allowed by law, an owner of real property has a duty to prevent, remove, or abate a public nuisance on his or her real property when the owner knows or has reason to know that the nuisance exists.

Sec. 9.02.050. - Violation.

- A. Any person who violates a provision of this chapter, or fails to comply therewith or with any of the requirements thereof, shall be subject to remedies available under this chapter and/or State law, including being cited by County staff. Whenever in this Code any act or omission is made unlawful, it shall include causing, maintaining, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.
- B. All violations are misdemeanors. Each day that a violation continues shall be deemed a separate offense. Any person convicted of a misdemeanor under the provisions of this Code shall be punished by a fine not exceeding \$1,000.00 or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Unless provided otherwise and at the discretion of the District Attorney, the violation may be reduced to an infraction with maximum penalty of \$500.00. Pursuant to Government Code section 53069.4, if a violation is reduced to an infraction, the administrative fine shall not exceed the maximum fine or penalty amounts for infractions set forth in sections 25132 and 36900.
- C. The imposition of any fines prescribed herein shall not preclude abatement of any violation enforced through this chapter by the Enforcement Official or institution of any other civil or criminal legal proceedings.
- D. Nothing in this chapter shall be interpreted to preclude an Enforcement Official from informally encouraging citizens to comply with this Code or other applicable laws. Informal oral or written requests to encourage compliance are encouraged, as are attempts to informally negotiate or mediate issues relating to compliance.

Sec. 9.02.060. - Guidelines for exercising enforcement authority.

- A. Administrative enforcement of the provisions of this Code and other applicable laws shall be limited to cases where:
 - (1) Specific bona fide citizen complaints have been received;
 - (2) The violation occurs within the context of the County's oversight and/or approval of a project; or
 - (3) The enforcement action is a part of a plan for the uniform enforcement of a provision of the Code or other applicable laws within the County.
- B. No notice to correct shall be issued pursuant to a citizen complaint until the Enforcement Official has conducted an independent investigation and determined that there is good cause to believe that a violation has occurred.
- C. An administrative citation utilizing a fine and/or one or more of the following sanctions shall be available to redress infringement of the Code or applicable laws:
 - (1) Revocation and/or suspension of licenses or permits, special use permits, or other entitlements issued by the County;
 - (2) The placement of conditions and/or requirements for corrective action on permits, licenses, or entitlements issued by the County as a condition to avoid revocation of the permit, license, or entitlement; and
 - (3) Requiring a responsible person to post a performance bond, irrevocable letter of credit, or other adequate security to ensure compliance with the Code or other applicable laws.

Sec. 9.02.070. - Confidentiality in connection with citizen complaints.

The County shall take all reasonable steps to ensure that the identity of any person making a complaint to the County concerning a violation of the Code or other applicable laws shall remain confidential. It is declared and found by the Board that the public interest served by not making the information public clearly outweighs the public interest served by disclosure of the information as is required by the Public Records Act. It shall be a misdemeanor to knowingly file a false complaint.

Sec. 9.02.080. - Coordination of inspections.

It shall be the duty of the Development Services Code Enforcement Unit to coordinate the inspections and administrative orders as fully as practicable so that the owners and occupants of the premises shall not be subjected to visits by numerous inspectors or multiple or conflicting orders.

Sec. 9.02.090. - Recovery of administrative fees; purpose.

The Board finds there is a need to recover the cost of abatement incurred by the County in its code enforcement efforts. Costs of abatement include costs reasonably related to enforcement, including but not limited to, site inspections, travel time, investigations, telephone contacts, preparation of summaries, reports, notices, correspondence, warrants, and hearing packets, recordation of documents, and legal research and preparation for and attendance at any administrative proceedings under this chapter. The time expended by any County officer or staff to calculate the above costs and prepare itemized invoices, may also be recovered.

Sec. 9.02.100. - Notification of assessment of administrative fees.

- A. Where the recovery of the costs of abatement and/or assessment of an administrative fee is authorized under this chapter, the Enforcement Official shall provide the responsible person with a written notice assessing the costs and/or fee. The written assessment shall be served in accordance with Section 9.02.120 and shall contain the following information:
- (1) The amount of the administrative costs and/or fee charged;
 - (2) The case number;
 - (3) A deadline by which the administrative costs and/or fee must be paid;
 - (4) The violation giving rise to the administrative costs and/or fee; and
 - (5) The property by assessor's parcel number and street number or other description sufficient to enable identification of the property.
- B. An administrative fee may be assessed as part of any administrative enforcement action as provided for in this chapter and is in addition to any fine imposed.
- C. An administrative fee collected pursuant to this chapter shall not be duplicated in any other action to recover these identical fees.
- D. The failure of any responsible person to receive notification under this section of the administrative costs and/or fees shall not affect the validity of any costs or fees imposed under this chapter.

Sec. 9.02.110. - Collection of administrative fines or fees.

Fines or fees incurred in connection with code enforcement activities may be recovered through the billing process. Those fines or fees billed shall be paid within 30 days after the date of the imposition of the fine or billing, whichever is earlier. Any fines or fees not paid within such 30-day period shall be subject to a late fee in the amount of ten percent of the established fine or fee. The total fine or fee plus late fee as described herein shall accrue interest at a rate established by a resolution of the Board. Any fine or fee which remains unpaid 90 days after the

due date may be referred to the County Revenue Recovery for collection purposes and will be subject to additional fees to cover the cost of collection.

Sec. 9.02.120. - Service of notices.

- A. Whenever a notice is required to be given under this chapter and unless specifically provided otherwise, it shall be served by any one of the following:
 - (1) Personal service to the owner, responsible person if different than the owner, or anyone known by Code Enforcement to be in possession of the parcel;
 - (2) Certified mail, postage prepaid, return requested to the owner, responsible person if different than the owner, or anyone known by Code Enforcement to be in possession of the parcel. Simultaneously, the same notice may be sent by regular mail. If a notice that is sent certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned; or
 - (3) Posting the notice conspicuously on or in front of the property, business, or other place reasonably anticipated to provide notice to the responsible person of a violation of this Code.
- B. Service of a notice by any of the methods in Subsection A of this section shall be effective on the date of mailing or posting, as applicable.
- C. If the certified mail is returned as unclaimed and the regular mail is returned as undeliverable, additional steps to attempt to provide notice shall be taken if those additional steps are practicable. The failure of any responsible person to receive any notice served in accordance with this section shall not affect the validity of any enforcement action taken under this Code so long as the notice was reasonably anticipated to apprise the responsible person under all of the circumstances.
- D. Any notice served under this section shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property.

Sec. 9.02.130. - Notice to correct; procedures.

Whenever a violation is discovered and the responsible person has not been issued a notice to correct for the same violation within the past 12 months, the Enforcement Official may issue a notice to correct in order to notify the responsible person of the violation and to order that the violation be corrected. If the violation is related to a permit, license, or other County approval of a project, the notice to correct may be accompanied by a stop work order which orders the responsible person to immediately stop any and all work on the project that is subject to a permit, license, or approval until the violation is corrected and/or the required permit is issued. The notice to correct shall include the following information:

- (a) The name and address of the responsible person in violation. If the notice pertains to events occurring on or the status or condition of property, the notice shall also be served on all property owners of record. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property;
- (b) A statement from the Enforcement Official identifying the conditions that violate the Code and the specific provisions of the Code that have been violated;
- (c) A statement advising the County may impose an administrative citation with an accompanying fine if the violation is not abated within the noted deadline;
- (d) If applicable, a list of necessary corrections to bring the property into compliance;
- (e) If applicable, a deadline or specific date to correct the violation listed in the notice of violation;
- (f) A statement that the failure to timely request a hearing (procedure set forth in Section 9.02.390) will be deemed an admission of the violation(s) in the notice to correct and a failure to exhaust administrative remedies in any subsequent action to challenge any decision or action under this Chapter;
- (g) A statement that the notice to correct may be recorded at the County Recorder's Office if the violation is not abated by the noted deadline;
- (h) A statement that the responsible person must notify Code Enforcement in writing once compliance has occurred, that the violation will be deemed on-going unless and until that written notice is received, and that Code Enforcement may request to inspect the property to confirm that the violation has been corrected; written notice may be in the form of a letter mailed or delivered to Code Enforcement or an email to Code Enforcement at the email address identified in the notice to correct; and
- (i) A statement that enforcement under this Chapter does not preclude the County, state, or federal government from pursuing any other criminal, administrative, or judicial remedy to abate or address the violation, conduct, or condition

Sec. 9.02.140. - Recording notice to correct; purpose.

The Board finds that there is a need to give notice of pending enforcement actions to persons who may subsequently acquire property subject to a violation. A seller is required to notify a buyer. Another method to accomplish this is through the issuance and recording of a notice to correct.

Sec. 9.02.150. - Procedures for recording notice to correct.

- A. Once an Enforcement Official has issued a notice to correct to a responsible person and the property remains in violation after the deadline established in the notice to correct, the Enforcement Official may record the notice to correct with the County Recorder's Office.
- B. Any costs associated with recording the notice to correct will constitute administrative costs of abatement subject to collection under this chapter.

Sec. 9.02.160. - Service of notice to correct.

A copy of the recorded notice to correct shall be served on the responsible person and all owners of record as set forth in this chapter.

Sec. 9.02.170. - Notice of compliance; removal procedures.

- A. When a notice to correct has been recorded and the violation listed on the notice to correct has been corrected, the responsible person may file a written request for a notice of compliance by mail or email with the Enforcement Official.
- B. Within a reasonable time of receiving a request for a notice of compliance, the Enforcement Official shall confirm that the violation has been corrected or abated, which confirmation may include the re-inspection of the property. The Enforcement Official shall provide a notice of compliance to the responsible person if the Enforcement Official determines that:
 - (1) All violations listed in the recorded notice to correct have been corrected;
 - (2) All necessary permits have been issued and finalized; and
 - (3) All administrative fines and fees have been paid.
- C. The Enforcement Official shall record or cause to be recorded the notice of compliance with the County Recorder's office. The recording of the notice of compliance shall have the effect of canceling the recorded notice to correct.
- D. If the Enforcement Official denies a request to issue a notice of compliance, the Enforcement Official shall serve the responsible person with a written explanation setting forth the reasons for the denial and notice of the opportunity to appeal the denial by requesting a hearing under this chapter. The written explanation shall be served pursuant to section 9.02.120.

Sec. 9.02.180. - Administrative citations and fines; authority.

The County may impose administrative fines and/or fees for any of the acts or omissions set forth in this chapter. Administrative fines and/or fees shall be imposed, enforced, collected, and reviewed in compliance with the provisions of this chapter.

Sec. 9.02.190. - Administrative citations; procedures.

- A. If the violation has not been abated within the time requested in a notice to correct or notice to abate, an Enforcement Official may issue an administrative citation to a responsible person in the manner prescribed in this chapter that includes all fines and fees from the date of the notice to correct.
- B. Each and every day that a violation of the Code exists constitutes a separate and distinct offense.
- C. Administrative fines shall be assessed by means of an administrative citation issued by the Enforcement Official and shall be payable directly to the Community Development Services, which shall credit the same to the repair and demolition fund.
- D. Administrative fines assessed by means of an administrative citation shall be collected in accordance with the procedures specified in this chapter.
- E. All administrative fees shall be paid to the County department from which the administrative costs were incurred.

Sec. 9.02.200. - Contents of administrative citation.

Any administrative citation shall contain:

- (a) The name and address of the responsible person in violation. If the administrative citation results from events occurring on property or from the status of or condition of property, the citation shall also contain the address of the property;
- (b) A statement of the provisions of the Code that have been violated and the date and the location of the violation;
- (c) Where appropriate, the action required to correct the violation, a deadline by which the violation must be corrected, and the consequences of failing to comply;
- (d) A statement that each day that the responsible person does not correct or abate the condition after the date specified in the administrative citation shall constitute a separate violation subjecting the responsible person to the fines set forth in this chapter or greater fines in a different chapter;
- (e) The amount of the administrative fine imposed for the violation;

- (f) A statement that the responsible person in violation may request an administrative hearing under this chapter on the imposition of the administrative fine within ten calendar days of the date the administrative citation is served;
- (g) A statement that any person appealing an administrative citation shall deposit the refundable hearing fee and the administrative citation fine being appealed unless a waiver is requested and granted under section 9.02.380. A statement that any hearing fee and administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation;
- (h) A statement that if the responsible person fails to request an administrative hearing on the imposition of the administrative citation, the citation imposing the fine shall be final. Failure to request a hearing will be deemed an admission of the violation(s) in the administrative citation and a failure to exhaust administrative remedies in any subsequent action to challenge any decision or action under this chapter;
- (i) A statement that the responsible person must notify Code Enforcement in writing once compliance has occurred and that the violation will be deemed on-going unless and until written notice is received; written notice may be in the form of a letter mailed or delivered to Code Enforcement or an email to Code Enforcement at the email address identified in the citation; and
- (j) A statement that enforcement under this Chapter does not preclude the County, state, or federal government from pursuing any other criminal, administrative, or judicial remedy to abate or address the violation, conduct, or condition.

Sec. 9.02.210. - Fines for administrative citations.

- A. If the responsible person fails to correct the violation, subsequent administrative citations may be issued for the same violation. The amount of the fine shall increase in accordance with the schedule in subsection (B) of this section.
- B. Unless provided otherwise in a different chapter enforceable pursuant to this chapter, the fines assessed for each administrative citation issued for the same violation shall be as follows:
 - (1) First administrative citation: \$100.00.
 - (2) Second administrative citation: \$250.00.
 - (3) Third or subsequent administrative citation: \$500.00.
- C. Payment of the fine shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the County.
- D. All fines shall be payable to the Community Development Services unless otherwise directed on the citation.

- E. For all delinquent unpaid administrative fines, there shall be a penalty imposed in accordance with the provisions of this chapter. The delinquency date for an administrative fine shall be 30 days following the imposition of the fine or the administrative determination of the hearing officer, whichever is later.
- F. The right to and procedures for requesting an administrative hearing are detailed in Section 9.02.390.

Sec. 9.02.220. - Failure to pay a monetary sanction.

Any amount owed under this Chapter shall bear interest at a rate established by a resolution of the Board from the date such payment was due until paid in full. The County may take any of the following actions to collect money owed under this chapter:

(A) For any fine or penalty:

(1) *Liens.* To the fullest extent allowed by law and after notice and a hearing before the Board, the amount of the unpaid sanction plus interest and a reasonable administrative fee established by the Board from time to time to cover the cost of collection may be declared a lien on any real property owned by the responsible party within the County.

(a) Notice shall be given to the responsible party prior to the recordation of the lien and shall be served as required by this chapter.

(b) The lien shall attach when the Chief Administrative Officer or his or her designee records a lien listing delinquent unpaid sanctions with the County Recorder's Office. The lien shall specify the amount of the lien, the date of the Code violation, the date of the final administrative decision, the street address, legal description, and parcel number of the parcel on which the lien is imposed and the name and address of the recorded owner.

(c) In the event that the lien is satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (A)(1)(b) of this section shall be recorded by the County Recorder.

(2) Any other administrative or judicial remedy available for the collection of unpaid sanctions.

(B) For costs of abatement and related administrative fees and costs:

(1) Special Assessment pursuant to Government Code sections 38773.5 and 25845 declared against the parcel of land on which the nuisance is maintained provided that one or more owners of that parcel created, caused, committed, or maintained the nuisance giving rise to the violation. After providing notice pursuant to section 38773.5(c), the Chief Administrative Officer or his or her designee may present a resolution to the Board to declare a special assessment, and upon passage and adoption thereof, shall cause a certified copy thereof to be recorded with the

County Recorder's office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.

- (2) Nuisance abatement lien pursuant to Government Code section 38773.1. After providing notice pursuant to section 38773.1(b) and hearing before the Board, the Chief Administrative Officer or his or her designee may present a resolution to the Board to declare a nuisance abatement lien and, upon passage and adoption thereof, shall cause a certified copy thereof to be recorded with the County Recorder's office.
- (3) Any other administrative or judicial remedy available for the collection of unpaid costs of abatement or administrative costs.

(C) In addition to any requirements under state law, any notice for a lien for penalties, nuisance abatement lien, or special assessment shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the Hearing Officer if a hearing was requested, describe the real property subject to the lien, set forth the amount of the costs and penalties incurred to date, and, if applicable, the date upon which the abatement was completed. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

(D) In any action under this chapter, including any action to collect unpaid fines or abatement costs, 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 attorney's fees under this subsection shall be limited to those actions or proceedings in which the county elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.

Sec. 9.02.230. - Recovery of collection costs.

- A. Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including but not limited to, administrative costs and time expended by County staff and counsel.
- B. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.
- C. Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

Sec. 9.02.240. - Administrative and summary abatements; purpose.

The Board finds that it is necessary to establish appropriate procedures for the administrative and summary abatement of Code violation. These sections govern the abatement procedures established in all chapters of the Code unless other procedures are specifically stated to apply. Unless this chapter or any other chapter declares that a violation is deemed to be a nuisance, abatement by the County under this chapter may not proceed unless and until the condition or activity is declared to be a nuisance through a noticed hearing before the Board, a hearing officer under this chapter, or by a court of competent jurisdiction.

Sec. 9.02.250. - Warrant Requirement.

Any Code Enforcement Official or County staff or contractors shall not enter any property or seize any property absent a valid warrant under California Code of Civil Procedure sections 1822.50 through 1822.56 authorizing the inspection, search, or seizure or exigent circumstances providing an exception to the warrant requirement.

Sec. 9.02.260. - Authority.

Any condition caused, maintained, or permitted to exist in violation of any provisions of this Code may be abated by the County pursuant to the procedures set forth herein.

Sec. 9.02.270. - Notice to abate; general procedures.

- A. Whenever the Enforcement Official or Hearing Officer determines that public or private property or any portion of public or private property is in violation of any section of this Code, a notice to abate may be issued to the responsible person to abate the violation. If the notice pertains to events occurring on or the status or condition of property the notice shall also be served on all property owners of record. The notice to abate shall include the following information:
- (1) The name and address of the responsible person in violation. If the administrative citation results from events occurring on property or from the status of or condition of property, the citation shall also contain the address of the property and the assessor's parcel number;
 - (2) A statement of the provisions of the Code that have been violated and the date and the location of the violation;
 - (3) Where appropriate, the action required to correct the violation, which may include, without limitation: corrections, repairs, demolition, removal, obtaining the necessary

permits, vacation of tenants or occupants, or other appropriate action, and a deadline by which the violation must be corrected;

- (4) A description of consequences should the responsible person fail to comply with the terms of the notice, including potential removal and destruction of any property giving rise to the violation;
 - (5) A statement that the responsible person may request an administrative hearing on the notice to abate in accordance with this chapter and that failure to request a hearing will be deemed an admission of the violation(s) in the notice to abate and a failure to exhaust administrative remedies in any subsequent action to challenge any decision or action under this Chapter;
 - (6) A statement that failure to abate the violation or request a hearing within the time provided for in the notice to abate may result in abatement by the County under this Chapter, which may include the removal and destruction of property giving rise to the violation;
 - (7) A statement that the responsible person must notify Code Enforcement in writing once compliance has occurred and that the violation will be deemed on-going unless and until written notice is received; written notice may be in the form of a letter mailed or delivered to Code Enforcement or an email to Code Enforcement at the email address identified in the notice to abate; and
 - (8) A statement that enforcement under this Chapter does not preclude the County, state, or federal government from pursuing any other criminal, administrative, or judicial remedy to abate or address the violation, conduct, or condition.
- B. Abatement time suspended for administrative hearing. If a responsible person requests an administrative hearing within the required time period set forth in this chapter, the date specified in the notice by which the owner must abate the condition is suspended for the period during which the owner requests a hearing and receives a decision.

Sec. 9.02.280. - Service of notice to abate.

A notice to abate shall be served on the responsible person in accordance with procedures detailed in Section 9.02.120. The failure of the responsible person to accept the service does not affect the validity of any proceedings taken under this Code.

Sec. 9.02.290. - Abatement by the County.

- A. Once the Enforcement Official has issued a notice to abate and the time for compliance has lapsed without abatement being fully completed or appealed through a hearing by the responsible person, the conditions may be abated by County personnel or by a private contractor hired by the County for that purpose, subject to the requirements of this chapter.

- B. County personnel or a private contractor can, subject to the requirements of this chapter, enter upon private property in a reasonable manner to abate the conditions as specified in the notice to abate, administrative order, or a court order of abatement.
- C. If any personal property is altered or removed as part of the abatement, written notice shall be provided to the responsible person and conspicuously posted in the area from which the personal property was removed. The written notice shall contain the following:
 - (1) A general description of the personal property altered or removed;
 - (2) The date and approximate time the personal property was altered or removed;
 - (3) A statement identifying the grounds for alteration or removal of the personal property;
 - (4) The address where the personal property will be located, including a telephone number through which a person may receive information;
 - (5) A statement indicating whether the responsible person may retrieve the property by calling the number provided or whether the responsible person must request a post-removal hearing at which it will be determined whether the property will be returned, unless immediate destruction is necessary to protect health and safety; and
 - (6) A statement that, if the responsible person does not retrieve or request a post-removal hearing within 95 days of the date of the notice, the property may be discarded pursuant to Chapter 8.86.
- D. When the abatement is completed, a report describing the work performed and an itemized accounting of the total abatement and administrative costs shall be prepared by the Enforcement Official. The report shall contain the names and addresses of the responsible person, the name and address of the property owner if different from the responsible person, and a description of the property by assessor's parcel number and street number or other description sufficient to enable identification of the property.
- E. All administrative fees and actual costs incurred by the County in abating the violation, including but not limited to the costs of any contractor, may be assessed and recovered against the responsible person pursuant to the provisions set forth in this chapter.

Sec. 9.02.300. - Summary abatement.

Whenever the Enforcement Official or Hearing Officer determines that an imminent threat to public health or safety exists that requires immediate correction or elimination, the Enforcement Official may exercise the following powers to summarily abate the hazard or nuisance:

- (a) Order the immediate vacation of any tenants and prohibit occupancy until repairs are completed;
- (b) Post the premises as unsafe, substandard, or dangerous;

- (c) Board, fence, or secure the building or site per County requirements;
- (d) Raze and grade that portion of the building or site to prevent further collapse;
- (e) Make any minimal emergency repairs as necessary to eliminate any immediate threat to public health or safety;
- (f) Remove the hazard or nuisance that constitutes an immediate threat to public health or safety; and/or
- (g) Take any other reasonable action deemed by the Enforcement Official as appropriate under the circumstances.

Sec. 9.02.310. - Summary abatement procedures.

- A. The Code Enforcement Official shall attempt to make contact through a personal interview, or by telephone, with the owner of the property or the person, if any, occupying or otherwise in real or apparent charge and control thereof. In the event such contact is made, the Code Enforcement Official shall notify such person of the danger involved and require that such condition be immediately removed, repaired, or isolated so as to preclude harm to any person or property. If the Code Enforcement Official is unable to make contact as hereinabove noted, or if the appropriate persons, after notification by the Code Enforcement Official, do not take action within such time as may be specified by such official, then the Code Enforcement Official may take all actions deemed necessary to remove, repair, or isolate such dangerous condition or conditions, with the use of County forces or a contractor engaged pursuant to the provisions of this Code.
- B. The Code Enforcement Official shall pursue only the minimum level of correction or abatement as necessary to eliminate the imminent hazard. Costs incurred by the County during the summary abatement process, including any contractor costs, shall be assessed, collected, and recovered against the responsible person.
- C. The Code Enforcement Official may also pursue any other criminal, administrative, or judicial remedy to abate any remaining violation.
- D. If any personal property is altered or removed pursuant to this Chapter, written notice shall be provided to the responsible person and conspicuously posted in the area from which the personal property was removed. The written notice shall contain the following:
 - (1) A general description of the personal property altered or removed;
 - (2) The date and approximate time the personal property was altered or removed;
 - (3) A statement identifying the grounds for alteration or removal of the personal property;
 - (4) The address where the personal property will be located, including a telephone number through which a person may receive information;

(5) A statement indicating whether the responsible person may retrieve the property by calling the number provided or whether the responsible person must request a post-removal hearing at which it will be determined whether the property will be returned, unless immediate destruction is necessary to protect health and safety; and

(6) A statement that, if the responsible person does not retrieve or request a post-removal hearing within 95 days of the date of the notice, the property may be discarded pursuant to Chapter 8.86.

Sec. 9.02.320. - Procedures for recording code enforcement lien.

- A. Before recording a code enforcement lien under this chapter, an Enforcement Official shall provide to the responsible person and all owners of record, using the procedures set for service of a code enforcement lien, a notice of intent to record stating that a code enforcement lien will be recorded unless payment of all monies due is paid in full on or before the date listed therein.
- B. The recorded code enforcement lien shall include the name of the property owner, the Assessor's parcel number, the street address, the parcels legal description, and a copy of the latest amounts due the County.
- C. Any cost associated with recording the code enforcement lien or removal thereof may be assessed against the property as provided for in this chapter.

Sec. 9.02.330. - Service of code enforcement lien.

A copy of the recorded code enforcement lien shall be mailed to the responsible person and all property owners of record and/or any other persons who have requested copies of such notices pursuant to the procedures set forth in Section 9.02.120.

Sec. 9.02.340. - Cancellation of code enforcement lien.

Once payment in full is received for the outstanding administrative fines and fees subject to the lien, or the amount is deemed satisfied pursuant to a subsequent administrative order, the Enforcement Official shall, within 15 calendar days from the date payment is made or decision is final, record a notice of satisfaction with the County Recorder's office. The notice of satisfaction shall cancel the code enforcement lien.

Sec. 9.02.350. - Administrative hearings procedures.

This chapter establishes the procedures for the use of Hearing Officers and the procedures governing administrative hearings for code enforcement actions under this chapter.

Sec. 9.02.360. - Qualification and disqualification of Hearing Officer.

- A. The Board may appoint any person to serve as a Hearing Officer deemed to have sufficient knowledge and training regarding the administrative process provided that the person is an attorney at law having been admitted to practice before the courts of this state for at least five years prior to his or her appointment.
- B. Any person serving as a Hearing Officer is subject to disqualification for bias, prejudice, conflict of interest, or for any other reason for which a judge may be disqualified in a court of law. A Hearing Officer must not have any personal interest in the outcome of any administrative action under this chapter or any other provision of the Code.

Sec. 9.02.370. - Powers of Hearing Officer.

- A. The Hearing Officer shall preside over administrative hearings.
- B. The Hearing Officer shall have the power to administer oaths and may impose such rules of decorum upon the proceeding as will promote the fair and efficient consideration of matters before the Hearing Officer.
- C. The Hearing Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the Hearing Officer independently determines that due process has not been adequately afforded.
- D. The Hearing Officer, upon receipt of a written request which is submitted no later than five business days before the hearing, may issue a subpoena for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena.
- E. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative hearing for the purpose of granting a continuance, ensuring compliance with an administrative order, modifying an administrative order, or where extraordinary circumstances exist, granting a new hearing.

Sec. 9.02.380. - Procedures for requesting an administrative hearing.

- A. No hearing to contest an administrative citation shall be held unless and until a request for hearing form provided by the County has been completed and submitted with a hearing fee

and the administrative fine. The refundable hearing fee shall be \$200.00 payable to El Dorado County to defray the cost of the hearing and may be changed by resolution of the Board. The request shall state the grounds for requesting the hearing and be filed with the Code Enforcement Unit on or before ten calendar days after service of an administrative citation or notice to abate or the date provided in the administrative citation notice or notice to abate, whichever is earlier.

- B. Any person appealing an administrative citation shall deposit the refundable hearing fee and the administrative citation fine being appealed.
- C. Any hearing fee and administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation or notice to abate was not responsible for the violation or that there was no violation as charged in the administrative citation or notice to abate. If the Hearing Officer affirms the violation, the Hearing Officer may impose administrative fees per Section 9.02.450 equal to the cost of administering the code enforcement case.
- D. If a hearing is requested but a person's financial condition prevents payment of the refundable hearing fee or depositing the administrative citation being appealed, the person may request waiver of the fee and the fee shall be waived if the person provides sufficient evidence of an inability to pay because of one of the reasons enumerated in California Government Code section 68632.
- E. The Chief Administrative Officer or his or her designee shall tape record the hearing and provide a copy of the recording to the Hearing Officer following the conclusion of the hearing. The Hearing Officer shall provide the record of the hearing and all photographs and demonstrative and documentary evidence introduced at the time of the hearing to Community Development Services and the records shall be maintained for a period of three years. The Hearing Officer shall preserve any notes from the hearing for a period of three years.

Sec. 9.02.390. - Procedures for notification of administrative hearing.

- A. Where the responsible person has made a timely request for an administrative hearing, the Hearing Officer shall schedule a day, time, and place for the hearing. Unless a shorter time is provided elsewhere in the Code, the hearing shall be scheduled for a date no more than 60 calendar days after receipt of the request for hearing unless both parties agree to a later date.
- B. Written notice of the time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the responsible person.
- C. The notice of hearing shall be served by any of the methods of service listed in this chapter.

Sec. 9.02.400. - Procedures at administrative hearing; admission of evidence.

- A. Administrative hearings are intended to be informal in nature. The Hearing Officer is not bound by formal rules of evidence, and no informality in any proceeding or in the manner of taking testimony will invalidate any decision of the Hearing Officer. The rules of evidence of courts of the State of California will be followed but may be relaxed at the discretion of the Hearing Officer when deviation from the formal rules of evidence will aid in a determination of the truth. The rules pertaining to discovery do not apply.
- B. An objection to the admissibility of evidence may be made by any party of record and the objection will be ruled on by the Hearing Officer. When an objection is made to the admission or exclusion of evidence, the grounds upon which the relief sought must be stated briefly. The Hearing Officer, with or without objection, may exclude inadmissible, incompetent, repetitious, or irrelevant evidence. Any evidence offered at the hearing must be material and relevant to the issues of the hearing.
- C. Each party shall have the opportunity to cross examine witnesses and present evidence in support of his or her case.

Sec. 9.02.410. - Standard of proof.

The County bears the burden of proof at an administrative hearing to establish the existence of a violation of the Code. The standard of proof is by a preponderance of the evidence.

Sec. 9.02.420. - Representation.

Any person may appear at any proceeding conducted under this chapter with or without representation by an attorney. No right shall exist for the appointment of counsel.

Sec. 9.02.430. - Failure to attend administrative hearing.

Any responsible person who requests a hearing or whose actions are the subject of an administrative hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and all objections to the notice or administrative citation, provided that the hearing was properly noticed. Failure to request a hearing or to appear if one is requested shall constitute a failure to exhaust administrative remedies.

Sec. 9.02.440. - Administrative order; compliance with administrative order.

- A. The decision of the Hearing Officer shall be entitled "administrative order."

- B. Once all evidence and testimony are completed, the Hearing Officer shall issue an administrative order which affirms, modifies, or rejects the Enforcement Official's action. The administrative order may affirm, modify, or reject the daily rate or duration of the administrative fines depending upon review of the evidence and may increase or decrease the total amount of administrative fines assessed.
- C. The Hearing Officer may issue an administrative order that requires the responsible person to cease violating this Code and to make necessary corrections or repairs or to complete any other reasonable act requested by the Enforcement Official, which may be modified by the Hearing Officer, to bring the property into compliance with this Code. The Hearing Officer shall include a specific timeframe to complete the requested act. For a violation of Chapter 130.14, the time to comply and abate the nuisance shall not exceed 72 hours.
- D. As part of the administrative order, the Hearing Officer may establish specific deadlines for the payment of administrative fines, fees, and costs and may condition the total or partial assessment of administrative fines on the responsible person's ability to complete compliance by specific deadlines.
- E. The Hearing Officer may issue an administrative order which imposes additional administrative fines as set forth in this chapter that will continue to be assessed for each day the violation continues until the responsible person complies with the Hearing Officer's decision and corrects the violation.
- F. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative order.
- G. If an administrative order provides for abatement of the violation by the County, it shall state the means of abatement and whether the property shall be destroyed upon removal.
- H. The administrative order shall become final on the date of service of the order.
- I. The administrative order shall be served on all parties by any one of the methods listed in this chapter.

Sec. 9.02.450. - Lien.

If the violation is not abated within the time prescribed in the administrative order, the Board may cause the violation to be abated as provided in this chapter and the cost of abatement, including any unpaid fines and civil penalties (Government Code section 53069.4), shall be charged against the real property upon which the violation has occurred and shall be a recorded lien upon such property and assessed and enforced, pursuant to Government Code section 25845.

Sec. 9.02.460. - Failure to comply with the administrative order; misdemeanor.

Failure to comply with an administrative order constitutes a misdemeanor. A misdemeanor is punishable according to the general penalties described in Chapter 1.24.

Sec. 9.02.470. - Administrative and judicial review.

- A. Within 30 calendar days from service of an administrative order or other decision by the Hearing Officer, any party may appeal the determination of the Hearing Officer to the Board in accordance with the provisions under Chapter 2.09 et seq. The Board shall thereafter set the matter for hearing at the next regular meeting of the Board. Except as otherwise provided by specific Code provisions, the Board shall apply the provisions of this chapter. The Board may consider any other non-cumulative and relevant evidence at the hearing.
- B. Within 20 calendar days from service of an order or other decision of the Board, any party may appeal to the superior court.
- C. Any party failing to timely file an appeal to the Board or the superior court shall be deemed to have waived any and all objections to the administrative Hearing Officers or the Board's decision. Any review of the matter conducted in court shall be de novo.

Sec. 9.02.480. - Time limits for repair, correction, or abatement after appeal.

Unless otherwise provided by the order of the Hearing Officer or the Board order, the owner or responsible party shall complete all actions necessary to bring the property into compliance with this Code within 30 calendar days of service of any order made by the Hearing Officer or the Board. The Enforcement Official may grant or deny a request for additional time to complete acts required for compliance with this Code that is made by the owner of record or any responsible person who is making reasonable progress in the repair, correction or abatement of violation. The request for and the granting or denial of additional time shall be made in writing.

Sec. 9.02.490. - Extension of time; court order.

When the superior court has entered an order relating to matters governed by this chapter, unless otherwise ordered by the court, jurisdiction relating to the matter shall remain with the superior court. Any extension of time or other relief must be sought, in the first instance, by application to the court for an order allowing an extension of time or any other relief.

Sec. 9.02.500. - Nuisance abatement, repair, and demolition fund.

- A. The Board shall establish a special revolving fund to be designated as the nuisance abatement, repair, and demolition fund. Fines collected under this chapter are to be deposited into this fund. Payments shall be made out of such fund upon the demand of the Chief Administrative Officer or his or her designee to defray the costs and expenses which may be incurred by the County in doing or causing to be done the necessary work, repair or demolition of dangerous or substandard buildings; removal of violation on any parcel which is determined to be a public nuisance; removing, disposing of, or demolishing any structure

which is a public nuisance; and securing any building, property or structure from entry or habitation when it is in a dangerous or unsafe condition. To this end, the Chief Administrative Officer or his or her designee shall cooperate with other County agencies that require funding for removal of a public nuisance that is related to the aforementioned application of this fund, and authorize as appropriate some or all of the necessary funding from the abatement fund to complete the abatement of a public nuisance.

- B. The Board may at any time transfer to the repair and demolition fund such sums as it deems necessary in order to expedite the performance of the work as delineated in this section, and the sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the Community Development Services, which shall credit the same to the repair and demolition fund.

Sec. 9.02.510. - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Sec. 9.02.520. - Nonexclusivity.

Nothing in this chapter shall limit or preclude the enforcement of other applicable laws to conduct within the scope of this chapter and the remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate the conduct described herein. The County may, in its discretion, abate a violation of this Chapter by initiation of a civil action, including an action for injunctive relief, without first going through the administrative procedures set forth herein.

Secs. 9.02.530-9.02.590. - Reserved.

ARTICLE II. - VACANT BUILDINGS

Sec. 9.02.600. - Maintenance of vacant buildings.

The Board finds as follows:

- A. When the owner of a vacant building fails to actively maintain and manage the building, the building can become a major cause of blight in both residential and nonresidential neighborhoods. Vacant buildings that are boarded, substandard, or unkempt discourage economic development and retard appreciation of property values.
- B. It is a responsibility of property ownership to prevent owned property from becoming a burden to the neighborhood and community and a threat to the public health, safety, or welfare.
- C. Vacant properties owned by banks, mortgage companies, and other investors present a challenge to County code enforcement staff when trying to contact the person who is responsible for active maintenance of the property.

Sec. 9.02.610. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boarding means the covering of all entry points per County standards, including all open doors and windows, with plywood or other materials for the purpose of preventing entry into the building by persons or animals. Only access points to the building that can no longer be secured by normal means need to be boarded.

Vacant building means a building that is unoccupied, or occupied by unauthorized persons for any amount of time.

Sec. 9.02.620. - Vacant building penalty.

- A. No owner shall allow a building designed for human use or occupancy to be a vacant building without active maintenance for more than 30 calendar days, unless one of the following applies:
 - (1) The building is the subject of an active building permit for repair or rehabilitation and the owner is progressing diligently to complete the repair or rehabilitation.
 - (2) The building meets all codes, is ready for occupancy, and is:
 - (a) Actively being offered for sale, lease, or rent; or
 - (b) Is actively being maintained and monitored by the owner, as defined in Section 9.02.630.
- B. Violations of this section are considered a misdemeanor violation per Section 9.02.050.

Sec. 9.02.630. - Maintenance and monitoring of vacant buildings.

Active maintenance and monitoring of the building shall include all of the following:

- A. Maintenance of landscaping and plant materials in good condition as required and copied here from Health and Safety Code § 17920.3(h): Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the Chief of the Fire Department or his or her deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
- B. Maintenance of the exterior of the building in good condition as required and copied here from Health and Safety Code § 17920.3(g): Faulty weather protection, which shall include, but not be limited to, the following:
 - 1. Deteriorated, crumbling, or loose plaster.
 - 2. Deteriorated or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors.
 - 3. Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.
 - 4. Broken, rotted, split, or buckled exterior wall coverings or roof coverings.
- C. Regular removal of all exterior trash and similar materials or conditions as required and copied here from Health and Safety Code § 17920.3(j): Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.
- D. Prevention of criminal activity on the premises, including, but not limited to, illegal occupancy.
- E. Prevention of any condition recognized in law or in equity as constituting a public nuisance.
- F. Maintenance of the owners current contact information in the Code Enforcement Unit case file.
- G. Once proceedings have been commenced pursuant to this chapter to declare a property to be a violation under this subsection, no such property shall be deemed to be in compliance with this chapter solely because such property thereafter becomes occupied or changes ownership.

Sec. 9.02.640. - Required boarding of vacant buildings.

- A. Vacant buildings shall be boarded when the building can no longer be secured against intrusion by the closing and locking of doors and windows. The building shall be posted at each entrance with a sign containing the following:

DO NOT ENTER

It is illegal to enter or occupy this building or premises or to remove or deface this notice.
Trespassers will be prosecuted.

- B. Vacant buildings that are open and accessible and pose a hazard to the general public that requires immediate correction or elimination may be abated per Section 9.02.300.
- C. Any building that is boarded, whether by voluntary action of the owner, or as a result of enforcement activity by the County, shall be boarded in compliance with County standards promulgated by the Building Official. The Building Official may allow the owner to board a vacant building in a manner that the Building Official determines adequately prevents unauthorized entry or vandalism.
- D. It is the responsibility of the owner, through periodic inspection, to ensure the building remains secured.

Sec. 9.02.650. - Administrative penalty.

- A. Any owner of a building that is in violation of Section 9.02.630 shall be subject to an administrative penalty, in an amount not to exceed \$1,000.00 per building for the first violation.
- B. A second administrative penalty shall be imposed upon an owner pursuant to this article if the owner's building remains in violation of Section 9.02.630 for 30 calendar days following the imposition of the first administrative penalty. Additional penalties may be imposed in each 30 calendar day period following the imposition of an administrative penalty under this article. Additional penalties may be imposed so long as the violations continue. A second and any subsequent penalty shall be in an amount not to exceed \$5,000.00.
- C. If a previous administrative penalty has been imposed pursuant to this article upon an owner within two years of the date of the imposition of the present administrative penalty, and that previous administrative penalty related to a vacant building other than the building presently the subject of an administrative penalty, in no case shall the present administrative penalty be less than \$2,000.00, nor more than \$10,000.00.
- D. Fines or fees incurred in connection with this section may be recovered per Sections 9.02.110 9.02.220.

Sec. 9.02.660. - Service of notices.

Notices required by this article shall be served per Section 9.02.120.

Sec. 9.02.670. - Rights of appeal.

Any administrative penalty, or cost of abatement imposed pursuant to this article may be appealed per Section 9.02.350.

Pursuant to California Government Code section 25123, this ordinance shall become effective 30 days from the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 7th day of November, 2017, by the following vote of said Board:

Ayes: Hidahl, Veerkamp, Frentzen, Novasel, Ranalli

Noes: None

Absent: None

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

Kyra Schaffenberg
Deputy Clerk

Shiva Frentzen
Shiva Frentzen, Chair, Board of Supervisors

**APPROVED AS TO FORM
MICHAEL J. CICCOTZI
COUNTY COUNSEL**

By: Bre Moebius

Breann M. Moebius
Deputy County Counsel