ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF LASSEN
AMENDING TITLES 1, 3, 6, AND 19 OF THE LASSEN COUNTY CODE TO ALLOW CULTIVATION OF INDUSTRIAL HEMP, TO ESTABLISH A TAXATION RATE, AND TO EXEMPT IT FROM THE COUNTY RIGHT TO FARM PROTECTION

The Board of Supervisors of the County of Lassen, State of California, ordains as follows:

Section One: Title 19 of the Lassen County Code is renamed as follows:

"Title 19 Marijuana and Industrial Hemp".

Section Two: Section 19.010 of the Lassen County Code is amended to read as follows:

"19.010 Authority and Title.

Pursuant to the authority granted by Article XI, Section 7 of the California Constitution, the Lassen County Board of Supervisors hereby enacts this title, which shall be known and may be cited as the "Lassen County Marijuana and Industrial Hemp Regulation Ordinance."

Section Three: Section 19.020 of the Lassen County Code is amended to read as follows:

"19.020 Findings and Purpose.

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

(a) In 1996, the voters of the State of California adopted Proposition 215. This initiative, the Compassionate Use Act, enabled persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution. In 2004, the California Legislature enacted SB 420 which created a Medical Marijuana Program and sought to clarify portions of the Compassionate Use Act. The Legislature adopted AB2650 (2010) and AB1300 (2011) to vest and recognize that cities and counties could adopt local ordinances in furtherance of Prop 215 and SB420.

(b) In 2013, two cases out of California courts confirmed that local entities, namely, cities and counties, were not deprived of the authority to regulate the use of land within their respective boundaries just because Prop 215 and SB420 were passed. That is, the *Brown vs Tehama County* and *City of Riverside vs Inland Empire* cases confirmed the belief that Prop 215 and SB420 did not grant persons the unfettered right to grow marijuana. From these cases, and relying on the police power granted pursuant to the California Constitution, many jurisdictions across the state began regulating the time, place, and manner in which marijuana could be cultivated.

(c) In the fall of 2014 and the spring of 2015, the Lassen County Board of Supervisors received substantial testimony over the course of several meetings related to the impacts upon the peace, health, and safety of the residents of Lassen County as a result of the unregulated indoor and outdoor cultivation of marijuana. As a result of this public testimony, the Lassen County Board of Supervisors directed be prepared, and subsequently adopted April 21st of 2015, Title 19 to the Lassen County Code. Title 19 sought to limit, for the first time in Lassen County, the impacts which resulted from unregulated marijuana cultivation, both indoor and outdoor.

(d) In late 2015 and early 2016, the Lassen County Board of Supervisors received more testimony regarding the cultivation of marijuana in Lassen County since the initial adoption of Title 19 just months before. The Board of Supervisors heard testimony that many of the outdoor cultivation locations that had been creating a nuisance were eliminated as a result of the adoption of Title 19 and its enforcement. The Board of Supervisors also heard testimony that the number of cultivation sites in Lassen County was expanding, predominantly on vacant land in the most rural parts of the county.

(e) On or about April 12, 2016, the Lassen County Board of Supervisors amended Title 19 for the purpose of limiting cultivation to only those parcels of land within Lassen County where there was already a lawfully established residential structure. During the 2016 growing season, there were many cultivators within Lassen County that chose to simply ignore the requirement that cultivation could only occur on land which had a lawfully established residential structure.

(f) On or about October 11, 2016, the Lassen County Board of Supervisors amended Title 19 imposing a ban on all cultivation of marijuana in Lassen County.

(g) In the fall of 2015, the California Legislature passed and the Governor signed three significant pieces of legislation regarding medical marijuana. AB 266, AB 243, and SB 643 created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. Importantly, all licenses which could be issued by the state for such activities must first be approved by local government. These laws went into effect January 1, 2016. However, the state indicated it needed until January 1, 2018 to create the new agencies that would be administering such a new licensing system, and to draft and adopt new regulations regarding the licensing that will occur.

(h) On November 8, 2016, the voters of California adopted Proposition 64. Proposition 64 allows the recreational possession and use of cannabis and cannabis products. As part of that initiative, commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of cannabis was authorized. Like the legislative enactments the year before on medicinal marijuana, Proposition 64 created a new comprehensive state licensing system which would go into effect on January 1, 2018.

(i) On or about June 20 of 2017, the Lassen County Board of Supervisors further amended Title 19 to lift the ban on all cultivation and to allow cultivation once again for non-commercial purposes. The new iteration allowed non-commercial cultivation for medical purposes (outdoors) and recreations purposes (indoors; Proposition 64). All commercial marijuana activities were prohibited while the state began the implementation process of its new

commercial cannabis industry.

(j) For decades, marijuana and hemp have been listed on schedule 1 of the federal controlled substances act. Any sort of commercial activity related to those substances was historically a federal crime. In late 2018, the United States Congress removed industrial hemp from schedule 1 thereby paving the way for the creation of a new hemp based industry. The same authority, confirmed in the *Browne* and *Inland Empire* cases, as being the basis for regulating the time, place, and manner of cultivating marijuana is also applicable to regulating the time, place, and manner of cultivating industrial hemp.

(k) The Board of Supervisors has directed the implementation of an amendment to Title 19 to identify the conditions under which industrial hemp can be cultivated within Lassen County."

Section Four: Section 19.030 of the Lassen County Code is amended to read as follows:

"19.030 Definitions.

Except where stated otherwise, the following definitions shall govern the construction of this title:

"Accessory structure" means a fully enclosed and secure structure that complies with the California Building Standards Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two-inch by four-inch or thicker studs overlain with three-eighths-inch or thicker plywood or equivalent materials. An accessory structure is a structure that is secondary or incidental to a private residence. A structure cannot be an accessory structure if there is not a private residence on the premises. A greenhouse or hoop house is not an accessory structure for purposes of this title and all cultivation within a greenhouse or hoop house is to be deemed "outdoors."

"Cannabis products" has the same meaning as defined in California Health and Safety Code section 11018.1.

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

"Enforcing officer" shall have the same meaning as set forth in section 1.18.050 of the Lassen County Code (and as amended by this ordinance).

"Fence of substantial construction" means a seven-foot fence constructed of no less than four by four-inch wood posts, or two and five-sixteenths-inch steel posts, secured in the ground no less than thirty inches below grade, constructed in a workman-like manner, spaced no further than eight feet apart, with no less than two by four-inch wood rails, no fewer than three each

between posts, with one by six-inch wood pickets that have no gap between them. Substantial construction of a fence for this purpose also means the erection of a seven-foot chain link fence which includes sight obscuring slats.

“Industrial Hemp” or “Hemp” shall have that meaning as set forth in Health and Safety Code section 11018.5

“Indoor” or “indoors” means that the structure within which marijuana is being cultivated, must be a private residence or an accessory structure within the meaning of those definitions found elsewhere in this section of Title 19. All cultivation which does not specifically meet the definition of “indoor” or “indoors” is considered “outdoor” or “outdoors.” The cultivation of marijuana which occurs in a greenhouse or hoop house is considered “outdoor” or “outdoors” cultivation for purposes of this title.

“Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code). Legal parcel is not the same as Assessor’s Parcel Number (APN). One legal parcel may have multiple APNs. The allowable cannabis activities defined in Section 19.040 relate to premises, as defined below, and not individual APNs.

“Licensed day care provider” means a child care center or a family child care home licensed by the California Department of Social Services.

“Marijuana” or “Cannabis” shall have that meaning as set forth in Business and Professions Code section 26001(f).

“Outdoor” or “outdoors” means any cultivation location that does not specifically meet the definition of “indoor” or “indoors” or is otherwise specifically defined as “outdoor” or “outdoors.”

“Premises” shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “premises” for purposes of this title. Parcels are considered contiguous for purposes of this title if they touch at any point along their respective boundaries.

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

“Private residence” means a lawfully established structure, suitable for human occupancy as required by Sections 17922 and 17958 of the California Health and Safety Code. A recreational vehicle does not constitute a lawfully established structure for purposes of this title.

“Public park” means an area of land designated by any local governmental entity empowered to create a public park as an area to be held open to the public for recreational purposes.

“Qualified patient” shall have the meaning set forth in Health and Safety Code Sections

11362.5 and 11362.7 et seq.

"Residing on the premises" means that the person cultivating marijuana, whether for medicinal or recreational purposes, must be a legal occupant of a lawfully established structure, suitable for human occupancy as required by Sections 17922 and 17958 of the California Health and Safety Code, located on the premises upon which the cultivation is occurring. A recreational vehicle does not constitute a lawfully established structure for purposes of this title.

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

"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 California Vehicle Code Section 233."

Section Five: Section 19.040 of the Lassen County Code is amended to read as follows:

"19.040 Allowable Marijuana and Industrial Hemp activities.

(a) The establishment, maintenance, or operation of any commercial marijuana activity, including, but not limited to, cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of marijuana and marijuana products, which would require a license to be issued pursuant to state law (currently M.A.U.C.R.S.A.) is prohibited within the unincorporated territory of Lassen County and is hereby declared a public nuisance which may be abated or enjoined pursuant to this title.

(b) The non-commercial cultivation of marijuana in the unincorporated territory of Lassen County, whether for medical or recreational purposes, by any person, regardless of their status as a qualified patient or designated primary caregiver, in excess of the following limits is prohibited and is hereby declared a public nuisance that may be abated or enjoined pursuant to this title:

(1) All cultivation, recreational or medical, may only be performed by someone residing on the premises (within the meaning of that definition above) where the cultivation occurs.

(2) Allowable indoor cultivation: Marijuana, whether for medical or recreational use, may be cultivated indoors (within the meaning of that definition above) and then subject to the following limitations:

A. Not more than six living plants may be cultivated indoors at any one time for one premises.

B. The location where the cultivation is to occur shall not be accessible to minors at any time.

(3) Allowable outdoor cultivation: No recreational marijuana may be cultivated outdoors. Only medical marijuana may be cultivated outdoors (within the meaning of that definition above) and then subject to each of the following limitations:

A. Outdoor cultivation may only occur on a single contiguous two hundred fifty square-foot area located on the premises. The location at which measurements shall be taken in determining whether such cultivation is within two hundred fifty square feet within the meaning of this limitation shall be the interior side of any fence required for "outdoor" cultivation in subsection (b)(3)(B) below.

B. Outdoor cultivation shall be fully enclosed by a fence of substantial construction.

C. Outdoor cultivation shall be set back from all exterior property lines by at least fifty feet. Such setback distance shall be measured in a straight line from the property line to any fence required to be constructed to enclose an outdoor marijuana grow pursuant to this title.

D. There shall be no outdoor cultivation of marijuana, in any amount or quantity, upon any premises located within one thousand feet of any existing school, school bus stop, licensed day care provider, or public park. Such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school, school bus stop, licensed day care provider, or public park is located.

E. There shall be no outdoor cultivation on premises which are one acre in size or smaller.

(4) All cultivation, indoors or outdoors, medical or recreational, may only be performed by the legal owner of the premises or the legal resident thereof. If the person cultivating the marijuana is not the legal owner of the premises, such person shall possess a notarized consent form from the legal owner consenting to such cultivation. This consent form shall be at all times kept on the premises where the marijuana is being cultivated and a copy of which shall be made available, upon demand, to any enforcing officer. Lassen County planning and building services department will make forms available for such purpose.

(c) The cultivation of industrial hemp in the unincorporated territory of Lassen County, for whatever purposes, by any person, in excess of the following limits is prohibited and is hereby declared a public nuisance that may be abated or enjoined pursuant to this title:

(1) All industrial hemp operations in the unincorporated territory of Lassen County must at all times be in compliance with both federal and state statutes and regulations as may exist at the time of adoption of this ordinance and that may be amended from time to time; and

(2) All industrial hemp operations in the unincorporated territory of Lassen County

must at all times be in compliance with all terms and conditions of any state license, permit, or other entitlement issued by the State Department of Food and Agriculture; and

(3) All industrial hemp operations in the unincorporated territory of Lassen County must at all times be in compliance with Title 18 of the Lassen County Code as it exists at the time of adoption of this ordinance or may be amended from time to time; and

(4) All industrial hemp cultivation operations in the unincorporated territory of Lassen County are limited to legal parcels nineteen acres in size or larger; and

(5) All industrial hemp operations in the unincorporated territory of Lassen County are subject to unimpeded site visit and crop and/or product testing on six hours notice by agents of the County of Lassen Department of the Agriculture Commissioner.

(6) All industrial hemp cultivation must be maintained in excess of 150 yards from any residence not in common ownership with the parcel upon which the cultivation is occurring."

Section Six: Chapter 1.18 of the Lassen County Code, in it's current form, is repealed.

Section Seven: Chapter 1.18 of the Lassen County Code is hereafter created to read as follows:

""Chapter 1.18 Public Nuisances

Section 1.18.010 Purpose

The purpose of this chapter is to provide for the protection of the health, safety, and welfare of the residents of Lassen County by providing standards for the appearance and condition of properties; to protect the expectations of the residents of the County to enjoy their dwellings and property without being subjected to unpleasant conditions created or maintained by others; to protect property values and the livability of communities by providing an abatement process for nuisances as defined within this chapter; and to hold those persons who have, at any time, control over a nuisance, responsible for the abatement thereof.

Section 1.18.020 Public Nuisance defined

Any of the following is declared to be a public nuisance which may be abated or enjoined pursuant to this chapter:

1. Any condition declared by statute of the State of California, by ordinance of the County of Lassen, or resolution of the Lassen County Board of Supervisors to be a public nuisance; and

2. Any public nuisance at common law or equity; and

3. Anything which is injurious to health, or is indecent or offensive to the senses, or any accumulation of trash, refuse, waste, junk (except as otherwise permitted), debris, garbage,

rubbish and related matter, which by reason of its character and location is unsightly and interferes with the reasonable enjoyment of property by neighbors, or which detrimentally affects property value in the surrounding neighborhood or community, or which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity.

Section 1.18.040 Duty to Abate

No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this chapter to exist within the unincorporated territory of the County of Lassen. It shall be the duty of every owner, occupant and person that controls any land or interest thereon within this jurisdiction to remove, abate and prevent the reoccurrence of the public nuisance upon such land.

Section 1.18.050 Enforcing Officers

The persons authorized by the County of Lassen to enforce this chapter are as follows:

1. The Director of Planning and Building Services (which includes designations in existing provisions of Lassen County Code referring to the Director of Community Development), and/or his/her designee; and

2. The Sheriff and/or his/her designee; and

3. The Director of Health and Social Services and/or his/her designee; and

4. The Lassen County Agricultural Commissioner, and/or his/her designee; and

5. Any other person designated by resolution of the Lassen County Board of Supervisors either by name or classification and either for a particular case or as a function of their respective classification, as specified in the resolution.

Any person authorized to enforce this chapter identified above shall be known for all purposes pursuant to this chapter as the “enforcing officer”.

Section 1.18.060 Notice of Order to Show Cause

Whenever an enforcing officer determines that a public nuisance as described in this title exists on any premises within the unincorporated area of Lassen County, he or she is authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a “Notice of Administrative Order to Show Cause”.

Section 1.18.070 Contents of Notice

The notice set forth in Section 1.18.060 shall be in writing and shall:

(a) Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor, and identify the occupant(s), if other than the owner(s), if known or reasonably identifiable.

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

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

(d) Contain a statement that it has been determined by an enforcing officer that a public nuisance exists, as defined in section 1.18.020 above.

(e) Give a brief description of the nature of the public nuisance and any actions required to abate it.

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

(g) Notify the recipient(s) that, unless the owner or occupant abates the public nuisance, a hearing will be held before a county hearing officer to determine whether there is any good cause why these conditions should not be ordered abated. The notice shall specify the date, time, and location of this hearing, and shall state that the owner or occupant will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a public nuisance, or whether there is any other good cause why those conditions should not be abated.

(h) Contain a statement that, unless the owner or occupant abates the conditions, or shows good cause before the hearing officer why the conditions should not be abated, the enforcing officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.
(i) State the applicable hearing fee, if such a fee has been established.

Section 1.18.080 Service of Notice

(a) The notice set forth in Section 1.18.060 shall be served by either delivering it personally to the owner and to the occupant, or by mailing it to the occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that:

(1) Service by mail shall be made by first class postage prepaid United States mail service (USPS). If notice is served by mail, the time period for a hearing on said notice shall be extended by two additional days;

(2) If the records of the county assessor show that the ownership has changed since the last equalized assessment roll was completed, the notice shall also be mailed to the new

owner at his or her address as it appears in said records; or

(3) In the event that, after reasonable effort, the enforcing officer is unable to serve the notice as set forth above, service shall be accomplished by posting a copy of the notice on the real property upon which the public nuisance exists as follows: copies of the notice shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two copies of the order be posted on a property pursuant to this section.

(b) The date of deposit in the mail, personal delivery, or posting, as applicable, shall determine what the date of service is deemed to be for purposes of this title.

(c) The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.

Section 1.18.090 Establishment of Position of Administrative Hearing Officer

(a) The Lassen County Board of Supervisors hereby establishes the office of county hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, to which office the Board of Supervisors shall appoint one or more hearing officers. Each such hearing officer shall be an attorney at law having been admitted to practice before the courts of this state for at least five years. Hearing officers shall be appointed for a period of not less than one year. In the event that the board appoints more than one hearing officer, each day of hearings required under this section shall be assigned to a hearing officer based upon an alphabetical rotation. Hearing officers shall have those powers set forth in Sections 27721 and 27722 of the Government Code, including the power to conduct the hearing, the power to decide the matter under this section upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas at the request of a party of interest, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

(b) The county hearing officer, as established by sub-section (a) above, is vested with authority to hear and decide any case presented to him/her pursuant to this chapter, or any other title or chapter of Lassen County code which requires a due process determination by a hearing officer.

(c) Any hearing held before a hearing officer, including a hearing held pursuant to this chapter, shall be a final administrative determination on the issues presented.

Section 1.18.100 Hearing on Order to Show Cause

(a) Pursuant to Government Code Sections 25845, subdivision (i) and 27721, subdivision (a), the hearing officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated. This hearing

shall be held no less than ten calendar days after service of the notice.

(b) The owner or occupant of the property shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated.

(c) In the event that the owner or occupant does not appear and present evidence at the hearing, the hearing officer may base the decision solely upon the evidence submitted by the enforcing officer. Failure of the owner or occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.

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

(e) The hearing officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice and order. The hearing officer shall issue a written decision, which shall include findings relating to the existence or nonexistence of a public nuisance, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice. Such decision shall be mailed to, or personally served upon the parties upon whom the notice was served, and the enforcing officer. The decision shall be final when signed by the hearing officer and served as herein provided.

Section 1.18.110 Liability for Costs

(a) In any enforcement action brought pursuant to this chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who causes, permits, suffers, or maintains a public nuisance shall be liable for all costs incurred by the county, including, but not limited to, administrative costs, costs incurred in conducting an administrative hearing when an order for abatement is upheld, but not in a case where the order for abatement is not sustained, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this chapter, whether those costs are incurred prior to, during, or following enactment of this chapter; and

(b) In any action to enforce this chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorneys' fees incurred. Recovery of attorneys' fees under this sub-section 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 attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed

the amount of reasonable attorneys' fees incurred by the county in the action or proceeding.

Section 1.18.120 Enforcement

Whenever a person authorized to enforce this chapter becomes aware that an owner or occupant has failed to abate a public nuisance within five days of the date of service of the decision of the hearing officer, made pursuant to this chapter, the authorized person may take one or more of the following actions:

(a) Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary; and/or

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

Section 1.18.130 Accounting

Every enforcing officer shall keep an account of every cost incurred in enforcement of this chapter. At the conclusion of a public nuisance abatement case, the enforcing officer shall render a report of this account in writing, itemized by the parcel number, to the Board of Supervisors showing said abatement and administrative costs.

Section 1.18.140 Notice of Hearing on Accounting—Waiver by Payment

The enforcing officer shall deposit a copy of the account (referenced in 1.18.130 above) pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than ten business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and administration to the Lassen County Treasurer/Tax Collector prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.

Section 1.18.150 Hearing on Accounting

(a) At the time fixed, the Board of Supervisors shall meet to review the report of the enforcing officer. An owner may appear at said time and be heard on the question of whether the accounting, so far as it pertains to the cost of abatement and administration, is accurate and the amounts reported reasonable.

(b) The report of the enforcing officer shall be admitted into evidence. The report of the enforcing officer enjoys a presumption of accuracy. The owner bears the burden of proving that

the costs of abatement or administration included in the enforcing officers report are not accurate or reasonable.

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

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

Section 1.18.160 Special Assessment/ Lien

Pursuant to Section 25845 of the Government Code, the Board of Supervisors may order that any cost of abating or administering a case of public nuisances pursuant to this chapter and, as confirmed by the Board of Supervisors, be placed upon the county tax roll against the respective parcels of land (as a priority lien), or placed on the unsecured roll; provided, however, that the cost of abatement and administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to Section 25845 of the Government Code.

Section 1.18.170 Administrative Civil Penalties

(a) In addition to any other remedy prescribed in this title, any nuisance as described in this chapter may be subject to an administrative penalty of up to one thousand dollars per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement.

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

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

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

violation, and any other matters justice may require.

(e) The enforcing officer may commence the administrative process by issuance of a notice of violation and proposed administrative penalty, which shall state the amount of the proposed administrative penalty and the reasons therefor. The notice of violation and proposed administrative penalty may be combined with a notice and administrative order to show cause pursuant to Section 1.18.060.The notice of violation and proposed administrative penalty shall be served upon the same persons described in Section 1.18.070. Service of the notice shall be deemed sufficient if it is done in the manner described in Section 1.18.080. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed.

(f) The hearing officer shall consider the matter de novo, and may affirm, reverse, or modify the proposed administrative penalties contained in the notice. The hearing officer shall issue a written decision, which shall include findings relating to the imposition of any proposed administrative penalties. Such decision shall be mailed to, or personally served upon the parties upon whom the notice was served, and the enforcing officer in the same manner as described in Section 1.18.080. The decision shall be final when signed by the hearing officer and served as herein provided.

(g) Payment of an administrative penalty specified in the hearing officer's order shall be made to the county within twenty days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code Section 53069.4, subdivision (b).

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

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

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

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

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

(4)The clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it.

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

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

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

(8)Within thirty days following the Board of Supervisors adoption of a resolution imposing a lien, the clerk of the Board of Supervisors will file same as a judgment lien in the Lassen County recorder's office.

(9)Once the county receives full payment for outstanding principal, penalties, and costs, the clerk of the Board of Supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Lassen County recorder's office. This notice of satisfaction will cancel the county's lien under this section.

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

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

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

Section 1.18.180 Administrative Hearing Fees

(a) The Board of Supervisors may, by resolution, establish fees for hearings conducted pursuant to sections 1.18.060 and 1.18.170.

(b) If the hearing fee is paid and the hearing officer finds there is no nuisance as described in this chapter, the hearing fee shall be refunded to the person who paid the fee, without interest.
Section 1.18.190 Enforcement by Civil Action

As an alternative to the procedures set forth in Sections 1.18.060 through 1.18.180, the county may abate a violation of this title by the prosecution of a civil action through the office of the county counsel, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this title or requiring compliance with other terms.

Section 1.18.200 Summary Abatement

Notwithstanding any other provision of this chapter, when any public nuisance constitutes an immediate threat to public health or safety, and the procedures set forth beginning at section 1.18.060 through and including section 1.18.190 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in Section 1.18.070, but the formal notice and hearing procedures set forth in this chapter shall not apply. The county may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 1.18.130 through 1.18.160. Any action to summarily abate under the provisions of this section shall require that the enforcing officer, prior to the commencement of the abatement, prepare written findings of the grounds for such action and the exigencies supporting same which shall be reviewed and approved by the Lassen County District Attorney, as appropriate, prior to the abatement action.

Section 1.18.210 No Duty to Enforce

Nothing in this chapter shall be construed as imposing on the enforcing officer or the County of Lassen any duty to issue a notice of administrative order to show cause, to propose any administrative penalties, nor to abate any public nuisance, nor to take any other action with regard to any public nuisance, and neither the enforcing officer nor the County of Lassen shall be held liable for failure to issue any such notices, nor for failure to abate any such public nuisance, nor for failure to take any other action with regard to any public nuisance.

Section 1.18.220 Remedies Cumulative

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

Section 1.18.230 Severability

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

Section Seven: Sections 19.050 through and including Section 19.240 of the Lassen County Code are repealed.

Section Eight: Section 3.30.040, paragraph (2), of the Lassen County Code is amended to redefine the term "Cannabis" for purposes of this code to read hereafter as follows:

"(2) "Cannabis" means the same for purposes of this chapter as it does for purposes of section 19.030 of this code."

Section Nine: Section 3.30.050 of the Lassen County Code is amended to read as follows:

"3.30.050 Tax imposed.

(a) Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business, a cannabis business tax regardless if the business has been issued a county license to operate lawfully in the unincorporated area of the county or is operating unlawfully.

(b) The initial rate of the cannabis business tax shall be as follows:

(1) For every person who is engaged in commercial cannabis cultivation in the unincorporated area of the county:

(A) Two dollars annually per square foot of canopy space in a facility that uses exclusively artificial lighting.

(B) One dollar and fifty cents annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.

(C) Fifty cents annually per square foot of canopy space in a facility that uses no artificial lighting.

(D) Fifty cents annually per square foot of canopy space for any nursery.

For purposes of this subsection (b), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business' county license for commercial cannabis cultivation, or, in the absence of a county license, the

square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a county license be issued to a business which cultivates only for certain months of the year, the county shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the county commercial cannabis license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the tax administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

(2) For every person who engages in the operation of a testing laboratory: one percent of gross receipts.

(3) For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): four percent of gross receipts.

(4) For every person who engages in a cannabis distribution business: two percent of gross receipts.

(5) For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in subsection (b)(1), (2), (3) or (4): two and one-half percent of gross receipts.

(c) The county Board of Supervisors may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the county Board of Supervisors set any adjusted rate that exceeds the maximum rate calculated pursuant to subsection (d) of this section for the date on which the adjusted rate will commence.

(d) The maximum rate shall be calculated as follows:

(1) For every person who is engaged in commercial cannabis cultivation in the unincorporated area of the county:

(A) Through June 30, 2021, the maximum rate shall be:

(i) Three dollars annually per square foot of canopy space in a facility that uses exclusively artificial lighting.

(ii) Two dollars annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.

(iii) One dollar and fifty cents annually per square foot of canopy space in a facility that uses no artificial lighting.

(iv) One dollar annually per square foot of canopy space for any nursery.

(B) On July 1, 2021 and on each July 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the Western Region as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made nor shall the total amount of the tax exceed the maximum rates set forth in this subsection (d).

(2) For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and one-half percent of gross receipts.

(3) For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed eight percent of gross receipts.

(4) For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed four percent of gross receipts.

(5) For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in subsection (d)(1), (2), (3) or (4), the maximum tax rate shall not exceed four percent of gross receipts.

(e) For every person who engages in any industrial hemp activity other than cultivation, including but not limited to, manufacture, distribution, processing, laboratory testing, packaging, labeling, transportation, delivery, or sale of industrial hemp and industrial hemp based products, such activity shall be subject to the cannabis business tax defined in subsections (a) through (d) above. For the cultivation of industrial hemp, there is imposed upon each person engaged in such business a tax of one hundred dollars ($100.00) per acre, or portion thereof, under cultivation, with a five hundred dollar ($500.00) minimum (per parcel). Chapter 3.30 of the Lassen County Code shall apply to persons engaged in the cultivation of industrial hemp in all other respects other than this reduced amount of tax."

Section Ten: Section 6.02.050 of the Lassen County Code is created to read as follows:

" 6.02.050 Industrial Hemp

The cultivation of Industrial Hemp shall not be considered an agricultural activity that enjoys the protection of the right to farm pursuant to section 6.02.040 above."

Section Eleven: Chapter 18.107 of the Lassen County Code is repealed.

Section Twelve: This ordinance shall become effective thirty (30) days after its date of final adoption. It shall be published in the Lassen County Times, a newspaper of general circulation in Lassen County, according to law.

Introduced at a regular meeting of the Board of Supervisors on the 11th day of June, 2019, and passed and adopted by the Board of Supervisors of the County of Lassen, State of California, on the 18th day of June, 2019, by the following vote:

AYES:_____

NOES:_____

ABSTAIN:_____

ABSENT:_____

_____

JEFF HEMPHILL, Chairman
Lassen County Board of Supervisors

ATTEST:
JULIE BUSTAMANTE
Clerk of the Board

I, Michele Yderraga, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing ordinance was adopted by the said Board of Supervisors at a regular meeting thereof held on the 18th day of June, 2019.

_____

Deputy Clerk of the County of Lassen
Board of Supervisors