

ORDINANCE NO. 1581

AN ORDINANCE Adding CHAPTER 7.42 to the Yuba County Ordinance code declaring a temporary moratorium on the cultivation of industrial hemp within the unincorporated area of the County of Yuba.

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on the 26 day of, March 2019, by the following vote:

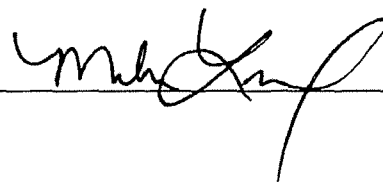
AYES: Supervisor Vasquez, Leahy, Bradford, Fletcher

NOES: None

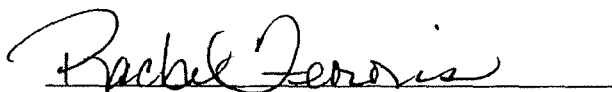
ABSENT: Supervisor Lofton

ABSTAIN: None

Chairperson of the Board of Supervisors County of
Yuba, State of California



ATTEST: Clerk of the Board of Supervisors



APPROVED AS TO FORM: County Counsel

By: B. Mumford, Deputy

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.42 of Title VII of the Yuba County Ordinance Code is hereby amended to read as follows:

**CHAPTER 7.42
INDUSTRIAL HEMP CULTIVATION**

SECTIONS:

- 7.42.100 Authority**
- 7.42.110 Purpose and Intent**
- 7.42.120 Findings**
- 7.42.130 Scope**
- 7.42.140 No Vested Rights**
- 7.42.150 Responsibilities**
- 7.42.160 Private Right of Action**
- 7.42.200 Definitions**
- 7.42.300 Cultivation Prohibitions**
- 7.42.400 Conditions Creating Public Nuisance**
- 7.42.500 Enforcement Authority**
- 7.42.510 Right of Entry/Inspection**
- 7.42.520 Violations**
- 7.42.530 Remedies**
- 7.42.540 Notice and Order to Abate**
- 7.42.550 Administrative Penalties**
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- 7.42.600 Appeal**
- 7.42.605 Appeal Hearings**
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- 7.42.620 Powers of the Yuba County Board of Supervisors**
- 7.42.630 Fairness of Hearings**
- 7.42.635 Evidentiary Rules**
- 7.42.640 Order of Proceeding at Hearing**
- 7.42.645 Speakers' Presentation**
- 7.42.650 Submission of Additional Written Evidence and Argument**
- 7.42.655 Field Trips**
- 7.42.660 Recording**
- 7.42.670 Decision**
- 7.42.680 Severability**
- 7.42.700 Sunset**

**ARTICLE I
GENERAL PROVISIONS**

7.42.100 Authority

Pursuant to California Constitution Article XI, Section 7, Government Code sections 25123, Government Code Section 25131, and other applicable laws, the Yuba County Board of Supervisors does hereby enact this Chapter.

7.42.110 Purpose & Intent

The purpose of this ordinance is to establish a moratorium on the cultivation of industrial hemp while the California Department of Food and Agriculture along with the Industrial Hemp Advisory Board set forth regulations and other administrative details for the commercial production of industrial hemp. The moratorium will also allow time for County staff to determine the impacts of unregulated cultivation by Established Agricultural Research Institutions, Seed Breeders, and others, as well as the impacts of draft regulations from the California Department of Food and Agriculture once enacted.

7.42.120 Findings

The Board of Supervisors of the County of Yuba makes the following findings in support of the adoption and application of this ordinance:

- A. Section 5940 of Title 7 of the United States Code states, "Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.), Chapter 81 of Title 41, United States Code, or any other Federal law, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a State department of agriculture may grow or cultivate industrial hemp if: (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and (2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs."
- B. Division 24, Industrial Hemp [81000-81010] of the California Food and Agricultural Code (hereafter "FAC") addresses the growing or cultivation of industrial hemp in California.
- C. On January 1, 2017, Division 24, Industrial Hemp [8100-81010] became operative.
- D. FAC Division 24 does not provide for the California Department of Food and Agriculture to establish a pilot program or to participate in, or promote, research projects recognized under Section 5940 of Title 7 of the United States Code.
- E. FAC Division 24, Section 81001, calls for the Industrial Hemp Advisory Board to advise the California Secretary of Food and Agriculture and make recommendations to the Secretary pertaining to the cultivation of industrial hemp, including but not limited to, developing the requisite industrial hemp seed law and regulations, enforcement mechanisms, and the setting of an assessment rate, as well as other administrative detail as necessary to provide for commercial production of industrial hemp in accordance with FAC Division 24.
- F. The California Department of Agriculture has issued a draft of the regulations for registration of growers of industrial hemp for commercial purposes and seed breeders in California; the draft regulations have not yet been adopted.
- G. Under FAC Division 24, all commercial growers and seed breeders of industrial hemp must register with the county agricultural commissioner prior to cultivation. Registration is not yet available.
- H. Therefore, the cultivation of industrial hemp for commercial purposes, or by seed breeders as defined under FAC Division 24 is prohibited within the State of California and the County of Yuba

until the Industrial Hemp Advisory Board has developed and implemented the requisite industrial hemp regulations and enforcement mechanisms.

- I. Despite the current prohibition on the cultivation of industrial hemp for commercial purposes, FAC Division 24 exempts cultivation by an "Established Agricultural Research Institution" and "Seed Breeders" from some of the regulatory requirements enumerated therein.
- J. An "Established Agricultural Research Institution" is defined under FAC Section 81000 as: "(1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or (2) An institution of higher education (as defined in section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research."
- K. Because industrial hemp and cannabis are derivatives of the same plant, *Cannabis sativa* L., the appearance of industrial hemp and cannabis are virtually indistinguishable to the untrained eye. Absent a laboratory performed chemical analysis for tetrahydrocannabinol (THC) content, the two plants cannot be distinguished under their legal definitions.
- L. FAC Division 24 allows an "Established Agricultural Research Institution", and "Seed Breeders" to cultivate or possess industrial hemp with a greater than .3% THC level, causing such plant to no longer conform to the legal definition of industrial hemp, thereby resulting in such "research" plants constituting cannabis. Farming industrial hemp requires growing the entire marijuana plant which at some point contains psychoactive levels of THC.
- M. The definition of "Established Agricultural Research Institution" as provided in FAC Division 24, Section 81000 is vague and neither the Legislature nor the Industrial Hemp Advisory Board have provided guidelines on how the County can establish whether a cultivator claiming to be an "Established Agricultural Research Institution" is legitimate or that the cultivation constitutes "agricultural or academic research." Without clear guidelines, the ability and likelihood that cultivators exploit the "Establish Agricultural Research Institution" exemption to grow industrial hemp with more than .3% THC is great.
- N. Chapter 7.41 of the Yuba County Code prohibits commercial cannabis activity in the unincorporated area of the County.
- O. Because industrial hemp and cannabis are virtually indistinguishable to the untrained eye, the cultivation of industrial hemp by an "Established Agricultural Research Institution", or a "Seed Breeder" prior to the adoption of reasonable regulations poses similar threats to the public health, safety or welfare as the cultivation of cannabis.
- P. The cultivation of industrial hemp by an "Established Agricultural Research Institution", or a "Seed Breeder" prior to the adoption of reasonable regulations will create an increased likelihood of criminal activity.
- Q. The cultivation of industrial hemp by an "Established Agricultural Research Institution", or a "Seed Breeder" prior to the adoption of reasonable regulations creates a high likelihood of attracting crime and associated violence, including without limitation, theft, robberies, illegal firearms, shootings and homicides.
- R. The Sheriff and other enforcing officers will have to investigate each industrial hemp grow conducted by an "Established Agricultural Research Institution", or "Seed Breeder" prior to the adoption of reasonable regulations to ensure that the crop is not cannabis. Investigations of industrial hemp grows are time consuming, labor intensive, and potentially dangerous.
- S. Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides specifically labeled for hemp that address such mites or other insects. The few pesticides that can

legally be applied to hemp are not always effective, which allows for such insects to move into other nearby crops.

- T. There are no requirements for pesticide use reporting or testing for industrial hemp when cultivated by an "Established Agricultural Research Institution" if pesticides on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 25(b) list are used. In addition, "Established Agricultural Research Institutions" may be using chemicals or pesticides that are extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- U. Industrial hemp and cannabis are not compatible crops. Thus, if this Board of Supervisors elects to pursue a particular option with respect to the outdoor cultivation of cannabis, the existence of industrial hemp grows may preclude the Board of Supervisors from considering certain projects or development plans.
- V. The cultivation of industrial hemp by an "Established Agricultural Research Institutions", or a "Seed Breeder" prior to the adoption of regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and land of nearby property owners.
- W. There is a need for the Agricultural Commissioner, the Sheriff, and other Agencies, to assess the impacts of industrial hemp grown within the proposed regulatory options relating thereto.
- X. Yuba County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances by the cultivation of industrial hemp.
- Y. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.
- Z. In order to ensure the effective implementation of the County of Yuba's land-use objectives and policies, a moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.
- AA. There is a current and immediate threat to public health, safety, and welfare in that the establishment of industrial hemp cultivation in the unincorporated areas of the County of Yuba will result in land uses and land developments that may conflict with amendments to the Yuba County Code that may be adopted as a result of the study that is to be undertaken.
- BB. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.
- CC. In order to ensure the effective implementation of the County of Yuba's land use objectives and policies, a moratorium on the establishment and/or approval of industrial hemp cultivation is necessary.
- DD. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemption applies: section 15308 (actions taken as authorized by local ordinance to assure protection of the environment). There are no unusual circumstances under CEQA Guideline 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.
- EE. This ordinance complies with State law and imposes reasonable regulations that the Board of Supervisors concludes are necessary to protect the public safety, health and welfare of residents and business within the County.

7.42.130 Scope

The provisions of this Chapter shall apply generally to all industrial hemp cultivation throughout the unincorporated area of the County of Yuba.

7.42.140 No Vested Rights

The provisions contained in this Chapter shall supersede any previous regulations related to industrial hemp cultivation. No person, firm, corporation or entity shall have any vested right to cultivate industrial hemp in any manner that is contrary to or inconsistent with the provisions contained herein.

7.42.150 Responsibilities

- A. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.
- B. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control and shall not cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.42.160 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2 DEFINITIONS

7.42.200 Definitions

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

- A. "Cannabis" shall have the same meaning as defined in the California Business and Professions Code, Section 26001(f), as: all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- B. "Cannabis Accessories" shall have the same meaning as set forth in California Health and Safety Code, Section 11018.2.
- C. "Cannabis Concentrate" shall have the same meaning as California Business and Professions Code, Section 26001(h)

- D. "Cannabis Products" shall have the same meaning as set forth in California Health and Safety Code, Section 11018.1.
- E. "Commissioner" means the County Agricultural Commissioner
- F. "Cultivation" means the planting, growing, harvesting, drying, processing, or storage 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.
- G. "Enforcement Official" means any County Official authorized to enforce the provisions of this Chapter.
- H. "Established Agricultural Research Institution" means (1) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or (2) An institution of higher education (as defined in section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research."
- I. "Industrial hemp" means a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent (.3%) tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. Industrial hemp shall have the same meanings as defined under Food and Agricultural Code Section 81000 and Health and Safety Code section 11018.5
- J. "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).
- K. "Marijuana" shall have the same meaning as "Cannabis".
- L. "Marijuana plant" means any mature or immature, growing or not, marijuana plant including the stalks of the plant.
- M. "Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.
- N. "Seed Breeder" means an individual or public or private institution or organization that is registered with the commissioner to develop seed cultivars intended for sale or research.
- O. "Seed Cultivar" means a variety of industrial hemp.
- P. "Seed Development Plan" means a strategy devised by a seed breeder, or applicant seed breeder, detailing his or her planned approach to growing and developing a new seed cultivar for industrial hemp.

**ARTICLE 3
CULTIVATION OF INDUSTRIAL HEMP PROHIBITED**

7.42.300 Cultivation Prohibitions

- A. No person or entity shall grow industrial hemp for any purposes within the unincorporated areas of Yuba County and no County permit or approval of any type shall be issued therefor.
- B. The cultivation of industrial hemp for commercial purposes, or by Seed Breeders within the unincorporated areas of Yuba County is prohibited.
- C. The cultivation of industrial hemp by an Established Agricultural Research Institution within the unincorporated areas of Yuba County is prohibited.

- D. The cultivation of industrial hemp, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this chapter.

ARTICLE 4 PUBLIC NUISANCES

7.42.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any person owning, leasing, occupying or having charge or possession of any parcel within the unincorporated area of the County to cause or allow such parcel to be used for the cultivation of industrial hemp in violation of the provisions contained herein.

ARTICLE 5 ENFORCEMENT

7.42.500 Enforcement Authority

The Yuba County Agricultural Commissioner and the Office of the Yuba County Sheriff are hereby designated to enforce this Chapter. The Commissioner may contract with Yuba County Code Enforcement to assist in the enforcement of this Chapter.

7.42.510 Right of Entry/Inspection

To enforce the provision of this Code, any designated Enforcement Official may, at a reasonable time, request inspection of any parcel suspected of cultivating industrial hemp in violation of this Ordinance. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Official shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.42.520 Violations

- A. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
- B. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
- C. Each person violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.42.530 Remedies

- A. Any violation of this Chapter may be deemed a public nuisance and is subject to any enforcement process authorized by law or as outlined in this Code.
- B. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.
- C. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.
- D. The remedies provided in this Chapter are cumulative to all other remedies now or hereinafter available to abate or otherwise regulate or prevent violations related to the cultivation of industrial hemp.

7.42.540 Notice and Order to Abate

- A. Upon making a determination that a public nuisance exists, the Enforcement Official shall notify the owner or the alleged violator, or both, that a public nuisance exists. As to an owner, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner directs. As to an alleged violator whom the Enforcement Official has determined directly or indirectly contributed to the condition creating the nuisance, the Notice and Order to Abate shall be delivered by personal service or by Certified, Return Receipt mail, with postage prepaid, to the last known address of the alleged violator. In addition, the Notice and Order to Abate shall be delivered by first class mail, with postage prepaid, addressed to the owner and alleged violator at the same addresses. A copy may also be posted on the property. The Enforcement Official shall complete a proof of service.
- B. The Notice and Order to Abate shall describe the use or condition which constitutes the public nuisance, and shall order that the uses or conditions constituting the nuisance be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time certain, normally being three (3) calendar days as determined necessary for such abatement by the Enforcement Official. Based upon the nature and complexity of the abatement process, the Enforcement Official shall identify the date certain for compliance on the Notice and Order to Abate Public Nuisance.

7.42.550 Administrative Penalties

- A. Any person who violates this Chapter shall be liable of a separate offense for each and every day, or portion thereof, the violation is committed, permitted or continued. In addition to the actual abatement and administrative costs incurred by the County, any person who has been issued a Notice and Order to Abate Public Nuisance shall be assessed an Administrative Penalty as follows:
 - 1. A penalty of \$100.00 for each violation of this Code as set forth in the Notice and Order to Abate.
 - 2. A penalty of \$200.00 for each violation of this Code when a second Notice and Order to Abate is issued for violations of this Code.
 - 3. A penalty of \$500.00 for each violation of this Code upon any subsequent Notice and Order issued beyond the second Notice and Order to Abate for violations of this Code.
- B. For the purpose of calculating the Administrative Penalty, each offense of any Section of this Chapter shall be charged as a separate violation; in addition, each industrial hemp plant in violation of this Chapter shall be charged as a separate violation.
- C. The Administrative Penalty, pursuant to this Section, shall be imposed upon the expiration of the time to remedy the violations as set forth in the Notice and Order to Abate Public Nuisance. In the event an appeal has been properly filed with the County, the appeal shall have no effect on the Administrative Penalty. At the conclusion of the hearing the Yuba County Board of Supervisors is authorized to modify or waive the Administrative Penalty for cause and shall make express findings into the record for such modification or waiver.

7.42.560 Enforcement Costs

- A. All costs and penalties associated with the enforcement of this Chapter are the responsibility of the owner(s) of any parcel(s) on which a nuisance has been found to exist and such costs shall be paid within 30 days of the date of demand thereof.

- B. Where costs and penalties go unpaid beyond 30 days, the Enforcement Official shall take action to confirm the costs, record a lien and place a special tax assessment pursuant to procedures as set forth in Chapter 7.36 of the Yuba County Ordinance Code.

ARTICLE 6 APPEALS AND UNIFORM HEARINGS AND PROCEDURES

7.42.600 Appeal

Any person who has received a Notice and Order to Abate Public Nuisance pursuant to this Chapter may request an appeal before the Yuba County Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate. The request for appeal shall be received by the Clerk of the Board of Supervisors within 10 calendar days of the date of the Notice and Order to Abate; must be in writing on a form prescribed by the Board of Supervisors, and must be accompanied by a deposit for costs as enumerated in Title XIII, Section 13.20.500, of this Code.

7.42.605 Appeal Hearings

The Board of Supervisors has discretion to delegate its authority to a hearing officer to hear appeals of violations of Title VII and render decisions on those appeals. The Board of Supervisors may delegate this authority by resolution or ordinance. If the Board of Supervisors delegates this authority, any reference to the "Board of Supervisors" in Chapter 7.4 et. seq. of this Code dealing with authority to hear and resolve appeals will also refer to "hearing officer."

7.42.610 Notice of Hearing

If the owner or alleged violator requests a hearing within ten (10) calendar days of the date of the Notice and Order to Abate, the Clerk of the Board of Supervisors shall schedule a hearing and cause notice of the hearing to be provided to the owner or alleged violator of the date, time and place the hearing will take place. Notice of the hearing shall be delivered by personal service or by Certified Return Receipt mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. In addition, the Notice of Hearing shall be delivered by first class mail, with postage prepaid, addressed to the owner as such owner's name and address appears on the last equalized assessment roll or to such other address as the owner or alleged violator provides. A proof of service shall be completed. The hearing shall be set for a date that is not less than five (5) and not more than thirty (30) days from the date that the request for hearing is filed with the Clerk of the Board of Supervisors.

7.42.620 Powers of the Yuba County Board of Supervisors

The Yuba County Board of Supervisors shall have the power to conduct the hearing, the power to decide a matter 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, 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, the power to prepare a record of the proceedings, and the power to grant continuances. Continuances of hearings will only be granted on a showing of good cause. Unavailability of an attorney does not constitute "good cause."

7.42.630 Fairness of Hearings

Hearings shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

7.42.635 Evidentiary Rules

The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable 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 such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Unduly repetitious or irrelevant evidence shall be excluded at the discretion of the Yuba County Board of Supervisors.

7.42.640 Order of Proceeding at Hearing

The Yuba County Board of Supervisors shall ordinarily proceed in the following order when conducting hearings:

- A. The Enforcement Official's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, and accounting of enforcement costs relating to the property, and a recommended decision.
- B. A presentation by or on behalf of the appellant shall next proceed.
- C. Tenants or other occupants of the subject property shall speak third.
- D. Individuals who are not appealing but own property immediately contiguous to the subject property shall speak fourth.
- E. Other interested parties shall speak fifth, and shall only provide evidence or testimony relevant to the pending matter before the Board of Supervisors.
- F. The appellant shall be entitled to rebuttal.

7.42.645 Speakers' Presentation

Each speaker shall approach the microphone and give his or her full name and address for the record.

- A. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the County. The Yuba County Board of Supervisors may establish a time limit for presentations; provided, however, that at least ten minutes shall be allowed for the Code Enforcement Officer presenting the case, as well as the property owner or alleged violator. All other speakers shall be limited to not more than three minutes. Speakers shall, at the discretion of the Yuba County Board of Supervisors, be allowed to speak for longer than ten minutes if that speaker represents a group of individuals, the remainder of which chose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitation upon length of written statements.
- B. The Yuba County Board of Supervisors shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented; to impeach any witness; and to rebut evidence. Witnesses shall be subject to cross-examination by the Yuba County Board of Supervisors.

- C. Subject to the Yuba County Board of Supervisors' right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.
- D. The Yuba County Board of Supervisors shall preserve all photographs and other documentary evidence introduced at the time of the hearing. After all of the testimony is taken, the Yuba County Board of Supervisors shall close the public hearing unless he or she deems it necessary to continue the hearing for the receipt of additional evidence or an ordinance interpretation from the Affected Department.

7.42.650 Submission of Additional Written Evidence and Argument

At any time before or after the hearing up to the point the hearing is closed by the Yuba County Board of Supervisors, any interested party may submit written evidence or argument. In the event the Yuba County Board of Supervisors concludes the hearing and continues the decision to another time, the Yuba County Board of Supervisors may, in their discretion, set a deadline for submission of written argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the Yuba County Board of Supervisors during the period of a continuance or after the public hearing has been closed.

7.42.655 Field Trips

Whenever the Yuba County Board of Supervisors deems it necessary to take a field trip to view the site in question, the Yuba County Board of Supervisors may conduct a site visit. Unless the site visit is tape recorded, the Yuba County Board of Supervisors shall not talk to any members of the public during the conduct of such site visit. After the conduct of a site visit, the Yuba County Board of Supervisors shall place into the record the visual observations made and the conclusions drawn as a result of such visit.

7.42.660 Recording

All proceedings shall be recorded. If a verbatim transcript is desired, the person requesting the transcript shall have the responsibility for arranging for the appearance of a court reporter to transcribe the hearing. In the event that a court reporter is present at the request of an interested party, the party retaining the court reporter shall provide a copy of the reporter's written transcript to the Yuba County Board of Supervisors at no charge to the County.

7.42.670 Decision

The decision of the Yuba County Board of Supervisors is final. The time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure, Section 1094.6 and the Yuba County Ordinance Code Chapter 1.16.

7.42.680 Severability

If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

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ARTICLE 7
SUNSET

7.42.700

This Ordinance shall remain in effect for one (1) year following its passage ("Sunset Date"), and as of that date is repealed, unless a later enacted ordinance, that is enacted before the Sunset Date, deletes or extends that date.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

