

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

2 ORDINANCE NO. \_\_\_\_\_

3 AN ORDINANCE ADDING SECTION 61.5 TO CHAPTER 21 ESTABLISHING  
4 ADMINISTRATIVE FINES FOR VIOLATIONS OF LAKE COUNTY CODE RELATING TO  
5 ADULT USE CANNABIS OPERATIONS

6 WHEREAS, the adult-use cannabis industry is a burgeoning industry in California, but because  
7 it is so new, both the positive and negative impacts associated with the growth of this industry remain  
8 somewhat unknown; and

9 WHEREAS, the County of Lake has suffered significant and, in some cases, irrevocable,  
10 environmental harm as a result of past actions related to illegal cultivation, including, but not limited to,  
11 the creation of massive earthen dams, heavy spillage of insecticides and other toxins into the County's  
12 waterways, and wide-spread erosion resulting from illegal grading; and

13 WHEREAS, one of the most significant dangers to the County residents and the environment  
14 are those persons who engage in adult-use cannabis operations without having obtained the necessary  
15 County permits because such operations have had no environmental review and operate outside the  
16 law, thereby imperiling the safety and security of the County; and

17 WHEREAS, the County of Lake is in the process of developing a comprehensive system to  
18 permit specified adult-use cannabis operations to operate in a manner designed to ensure industry  
19 success while at the same time protecting public safety; and

20 WHEREAS, it is critical to the above-described development, given the breadth and scope of  
21 the environmental damage at risk, that significant deterrents in the form of administrative fines be  
22 established to ensure compliance with the land use and permitting regulations imposed by the County.

23 NOW THEREFORE, the Board of Supervisors of the County of Lake hereby ordains as  
24 follows:

25 **Section One:** Section 65.5 is hereby added to Chapter 21 of the Lake County Code to  
26 read as follows:

27  
28 \_\_\_\_\_  
An Ordinance Adding Section 61.5 to Chapter 21 Establishing Administrative  
Fines for Violations of the Lake County Code Relating to Adult Use  
Cannabis Operations

1       **"Sec. 61.5. Penalties for Violations of Land use and Permitting Requirements for**  
2       **Adult Use Cannabis Operations.**

3       Notwithstanding Section 61.4 hereinabove, this section establishes the administrative fines  
4       which may be imposed for Lake County Code violations associated with adult-use cannabis  
5       operations.

6       Sec. 5.1. Purpose and Intent. The purpose of this Section is to establish fines relating to  
7       adult-use cannabis operations as defined herein. The procedures established in this Section are  
8       in addition to any other procedures or legal remedies used to address violations of County  
9       ordinances.

10       Sec. 5.2. Administrative Fines - Operating with a County-Issued Adult-Use Cannabis  
11       Operations Permit

12       (a) In addition to any corrective action, fines, and penalties as a public nuisance, any person  
13       engaged in adult-use cannabis operations which have been duly permitted by the County who  
14       violates any condition or requirement of said permit or permits and/or other violates provisions  
15       of the Lake County Code and does not correct the violation(s) within \_\_\_\_\_ days of the  
16       issuance of an Administrative Citation as described hereinbelow shall be subject to an  
17       administrative fine of \$1,000 per day per violation.

18       (b) For a second such violation within a twelve-month period commencing from date of  
19       issuance of the prior administrative citation to the same person, or on the same premises if the  
20       property owner remains the same, the administrative fine shall be \$2,500 per day per violation.

21       (c) For a third such violation within a twelve-month period commencing from date of issuance  
22       of the prior administrative citation to the same person, or on the same premises if the property  
23       owner remains the same, the administrative fine shall be \$5,000 per day per violation.

24       (d) Each cannabis plant cultivated outside a permitted cultivation site shall be a separate  
25       violation.

26       (e) For purposes of this section, "per day" means each day and includes any portion of a day.

1       Sec. 5.3. Administrative Fines for Persons Engaged in Adult-Use Cannabis Operations Without  
2       a County-Issued Permit

3       Certain misconduct poses such critical risk to the health and safety of the County's residents  
4       and the environment that a significant fine must be imposed beyond those fines described in  
5       Section 5.2 hereinabove. Any fine so imposed by this Section is not a tax or fee under Article  
6       XIII C, Section One, subdivision (e) (5) of the California Constitution and is subject only to the  
7       Excessive Fines Clause of Article 1, section 17 of the California Constitution and the Eighth  
8       Amendment of the United States Constitution. This Board finds that engaging in cannabis  
9       operations of any kind in the unincorporated areas of the County without having obtained  
10      and/or without continuing to maintain all required County permits to do so constitutes an  
11      egregious act because of the potential for significant and ongoing harm to public health and  
12      safety and potential for critical and lasting harm to the environment. Such conduct is  
13      prohibited.

14      (a) Any person engaged in adult-use cannabis operations without having first obtained any and  
15      all required County permits is in violation of this prohibition and, if the violation is not corrected  
16      within \_\_\_\_\_, shall be liable for an administrative fine of \$5000 per day per violation.

17      (b) For a second such violation within a twelve-month period commencing from date of  
18      issuance of the prior administrative citation to the same person, or on the same premises if the  
19      property owner remains the same, the administrative fine shall be \$7,000 per day per violation.

20      (c) For a third such violation within a twelve-month period commencing from date of issuance  
21      of the prior administrative citation to the same person, or on the same premises if the property  
22      owner remains the same, the administrative fine shall be \$10,000 per day per violation.

23      Sec. 5.4. Revocation After Four Violations

24      In addition to the revocation provisions in Chapter 21 of the Lake County Code and subject to  
25      the hearing procedures described hereinbelow, any person who has been found to have  
26      committed four violations within a two-year period may be subject to revocation of all County-

1 issued permits relating to adult-use cannabis operations. Should such revocation occur, no  
2 reissuance of such permit(s) shall be allowed for a period of \_\_\_\_ years and such reissuance  
3 shall in all respects be treated as a new permit(s) subject to all County procedures,  
4 requirements, and conditions determined necessary under the law then existing.

5 Sec. 5.5. Definitions.

6 (a) *Administrative Citation* means, for purposes of this Section, an official notification, on an  
7 appropriate form as established by this Section, of a violation of any provision of Chapter 21  
8 relating to adult use cannabis operations. Said Citations require correction of the violation and  
9 impose fines upon the responsible party.

10 (b) *Enforcement Officer* means any officer or department head of the County of Lake charged  
11 with the duty of enforcing regulations of the County of Lake or Laws of the State of California.

12 (c) *Responsible Party* means 1) each person committing the violation or causing a condition on  
13 a parcel of real property located within the jurisdiction of the County of Lake which gives rise  
14 to the violation; 2) each person who has an ownership interest in that property; or 3) each  
15 person who, although not an owner, nevertheless has a legal right or a legal obligation to  
16 exercise possession and control over that property.

17 (d) *Adult-Use Cannabis Operations* means any business activity involving cannabis, including  
18 but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting,  
19 processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and  
20 wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether  
21 or not carried on for gain or profit.

22 (e) *Person* means an individual, firm, partnership, joint venture, association, corporation, limited  
23 liability company, estate, trust, business trust, receiver, syndicate, or any other group or  
24 combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes  
25 the plural as well as the singular number.

26 Sec. 5.6. Administrative Citation for Fines.

- (a) A fine under this Section may be assessed through an Administrative Citation, issued by the Enforcement Officer and payable directly to the County.
- (b) Said fine shall be collected in accordance with the procedures specified in this Section.
- (d) Payment of the fine shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the County.
- (e) All fines shall be payable to the County at the address provided on the Administrative Citation and shall be deposited in an account designated for the enforcement of land use and permitting requirements.
- (f) Any fine paid pursuant to subsection a) above shall be refunded if it is determined, after an appeal hearing, that there was no violation as charged in the Administrative Citation.
- (g) If payment of a fine is not received by the County within thirty (30) days of service of the Administrative Citation, then a late fee shall be assessed. The amount of the late penalty shall be fifty percent (50%) of the total amount of the fine owed.
- (h) The County may collect any past due Administrative Citation fines and/or late payment charges by the use of judicial or other legal remedies.

Sec. 5.7. Procedures for Administrative Citations.

- (a) The Community Development Department Director may establish appropriate administrative regulations for implementing this Section.
- (b) When the Enforcement Officer observes a violation of a County ordinance, the Enforcement Officer may issue an Administrative Citation to any responsible person.
- (c) Each Administrative Citation shall contain the following information:
- (1) The date of the violation;
  - (2) The address or a definite description of the location where the violation occurred;
  - (3) The name, address, and other identifying information for the person being cited.
  - (4) The section of the County ordinance violated and a description of the violation;
  - (5) The fine schedule for the violation;

- (6) A description of how, when and where the fine must be paid;
- (7) An order prohibiting the continuation or repeated occurrence of the violation;
- (8) A brief description of the appeal process;
- (9) The name and signature of the citing Enforcement Officer.
- (d) The person cited shall be requested to sign the citation to acknowledge receipt of the citation.

Sec. 5.8. Notices.

(a) All notices required under this Section shall be served on the responsible party in accordance with the following provisions:

- (1) Personal service; or
- (2) Proof of mail, and first class mail to each Responsible Party at his or her last known address as it appears on the public records related to title or ownership of the property that is the subject of an administrative enforcement action; or
- (3) As to only those Responsible Parties who reside at or occupy the property that is the subject of an administrative enforcement action, as determined through diligent investigation; by posting the notice conspicuously on or in front of the subject property and mailing a copy of the notice to them by first class mail.
- (b) Service by Proof of Mail or first class mail in the manner described above shall be effective on the date of mailing.
- (c) The failure of any Responsible Party or other person with a legal or equitable interest in the property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this code.
- (d) If the person cited is not the owner of the property where the alleged violation occurred, written notice shall be personally delivered or sent by certified mail to the property owner at the address shown on the last equalized County assessment role.
- (1) When personal service by certified mail upon the owner cited is unsuccessful, a copy of the

notice shall be posted in a conspicuous place on the property where the alleged violation occurred.

Sec. 5.9. Appeal of Administrative Citation.

(a) Any recipient of an Administrative Citation may contest the citation by requesting an appeal hearing within ten (10) calendar days from the date of the citation. The Appeal must be in writing on a form furnished by the County specifying the basis for the appeal in detail. If the deadline to request an appeal hearing falls on a weekend or Holiday, then the deadline shall be extended until 5:00 p.m. on the next regular business day.

(b) The County shall hold a hearing within thirty days of receipt of an appeal. The person requesting the appeal hearing shall be notified of the time and place of the hearing at least ten (10) days prior to the date of the hearing.

(c) The Board of Supervisors shall hear the appeals.

(d) The failure of any person with an interest in the property to receive properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter.

(e) Failure to file an appeal in accordance with the provisions of this chapter shall constitute a waiver of rights to contest the accompanying Administrative Citation and the imposition of the fine.

Sec. 5.10. Hearing Procedure.

(a) The Board of Supervisors shall conduct an orderly hearing and accept evidence on which persons commonly would rely in the conduct of their business affairs

(b) At the appeal hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence, including witnesses, concerning the alleged violation. Any other interested party, including but not limited to the property or business owner, employees, or neighbors, may also present testimony.

(c) The Administrative Citation and any additional reports submitted by the Enforcement Officer shall constitute prima facie evidence of the facts contained in those documents.

(d) The Board of Supervisors may take the matter under consideration or may continue the hearing and/or request additional information from the Enforcement Officer and/or the person cited.

(e) The Board of Supervisors shall determine whether to affirm, dismiss, or modify the Administrative Citation. The Board of Supervisors may not reduce, waive or conditionally reduce the fines established by the County, absent good cause shown.

(f) The Board of Supervisors shall make findings based on the record of the hearing and shall issue a written decision based on the findings. The County shall preserve all exhibits submitted by the parties for a 30-day period and shall serve the decision by certified mail, postage prepaid, return receipt requested within ten (10) working days after the hearing. The decision of the Board of Supervisors affirming, dismissing, or modifying the citation is final and conclusive, without right of further administrative appeal.

**Sec. 5.11. Right to Judicial Review.**

Any person aggrieved by an administrative decision of the Board of Supervisors may obtain review of the administrative decision by filing a petition for review with the Superior Court in Lake County in accordance with the timeliness and other provisions set forth in California Government Code Section 53069.4."

**Section Two:** CEQA Review. This Board finds that the monetary amounts imposed by this ordinance are fines/penalties and are therefore exempt from the provisions of the California Environmental Quality Act ("CEQA").

**Section Three:** This Board finds that the fines and penalties authorized by this Ordinance are not taxes and are exempt from the provisions of Article XIII C of the California Constitution pursuant to Section 1 of Article XIII C, subdivision (e)(5).

**Section Four:** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict and no further.

**Section Five:** This ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_, 2018 and before the



1 expiration of fifteen days after its passage, it shall be published at least once in a newspaper of general  
2 circulation printed and published in the County of Lake.

3 The Foregoing Ordinance was introduced before the Board of Supervisors on the  
4 \_\_\_\_\_ day of \_\_\_\_\_, 2018, and passed by the following vote on the \_\_\_\_\_ day of  
5 \_\_\_\_\_, 2018.

6 AYES:

7 NOES:

8 ABSENT OR NOT VOTING:

9 COUNTY OF LAKE

10  
11 \_\_\_\_\_  
12 Chair, Board of Supervisors

13 ATTEST: CAROL J. HUCHINGSON  
14 Clerk of the Board of Supervisors

15  
16 By: \_\_\_\_\_  
17 Deputy

18  
19 APPROVED AS TO FORM:

20 ANITA L. GRANT

21 County Counsel

22 By: \_\_\_\_\_  
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