

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

108A



**FROM:** TLMA and County Counsel

**SUBMITTAL DATE:**  
**May 20, 2015**

**SUBJECT:** Adoption of Ordinance No. 925 Prohibiting Marijuana Cultivation and Declaring Marijuana Cultivation to be a Public Nuisance [All Districts - \$0] –CEQA EXEMPT

**RECOMMENDED MOTION:** That the Board of Supervisors adopt Ordinance No. 925, an ordinance of the County of Riverside prohibiting marijuana cultivation and declaring marijuana cultivation to be a public nuisance.

**BACKGROUND:**

**Summary**

On May 19, 2015, the Board held a public hearing regarding two related ordinances prohibiting marijuana cultivation. At the conclusion of the public testimony, the Board closed the public hearing and did the following: (1) found Ordinance Nos. 348.4802 and 925 are not a project under CEQA per CEQA Guidelines sections 15060(c)(3) and 15378 and are otherwise exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3) and 15308; (2) adopted Ordinance No. 348.4802, an ordinance of the County of Riverside amending Ordinance No. 348 related to zoning; and (3) introduced Ordinance No. 925, an ordinance of the County of Riverside prohibiting marijuana cultivation and declaring marijuana cultivation to be a public nuisance.

Departmental Concurrence

  
\_\_\_\_\_  
Gregory P. Priamos  
County Counsel

  
\_\_\_\_\_  
Juan C. Perez, Director  
Transportation and Land  
Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

**SOURCE OF FUNDS:** \_\_\_\_\_  
Budget Adjustment: N/A  
For Fiscal Year: N/A

**C.E.O. RECOMMENDATION:**

APPROVE: \_\_\_\_\_  
BY:   
Tina Grande

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

- A-30
- Positions Added
- 4/5 Vote
- Change Order

**3-26**

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FORM 11: Adoption of Ordinance No. 925 Prohibiting Marijuana Cultivation and Declaring Marijuana Cultivation to be a Public Nuisance [All Districts - \$0] –CEQA EXEMPT**

**DATE:** May 20, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary**

The Board's adoption of Ordinance No. 925 will finalize the Board's approval of the marijuana cultivation prohibition countywide.

Ordinance No. 925 declares marijuana cultivation, either indoors or outdoors, upon any premises within all unincorporated areas to be prohibited and a public nuisance subject to abatement and administrative and civil penalties. As directed by the Board on November 25, 2014 (agenda item 3-1), Ordinance No. 925 states that the County is committed to making efficient and rational use of its limited investigative and prosecutorial resources and that there shall be a limited exemption from enforcement for violations of the ordinance by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified in Section 3.4 of Ordinance No. 348 when the standards and conditions set forth in Section 12 of Ordinance No. 925 are met.

Ordinance No. 925 also contains sections regarding abatement of unlawful marijuana cultivation and appeals hearings, summary abatements, recovery of abatement costs and attorneys' fees, authorization for the placement of special assessments and liens, treble damages, administrative civil penalties of up to \$1000 per day, misdemeanor penalties, and enforcement by civil actions.

As advised in earlier agenda items on this subject, Ordinance No. 925 is not intended as, and should not be construed as, a legalization of marijuana under any circumstances but is an attempt to prioritize the County's civil abatement, prosecutorial and public safety resources with regard to marijuana cultivation. Under no circumstances will the County issue any types of land use permits or entitlements authorizing marijuana cultivation.

**Impact on Citizens and Businesses**

The proliferation of large-scale marijuana cultivation increases the risk of criminal activity, degradation of the natural environment and often results in illegal electrical and water connections and alterations. Large-scale marijuana cultivation also creates increased nuisance impacts to neighboring properties. The purpose of Ordinance Nos. 348.4802 and 925 are to provide for greater enforcement against large-scale marijuana cultivation with the goal of improving community livability and protecting public health, safety and welfare, while also recognizing a limited enforcement exemption for small amounts of marijuana cultivated for medical uses by registered medical marijuana patients. While the enforcement of these ordinances may result in increased unknown departmental costs, recovery of abatements costs are authorized under Ordinance No. 925 including the placement of special assessments and liens for recovery of such costs.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

N/A

Attachments:

1. Ordinance No. 925

1 ORDINANCE NO. 925

2 AN ORDINANCE OF THE COUNTY OF RIVERSIDE  
3 PROHIBITING MARIJUANA CULTIVATION AND  
4 DECLARING MARIJUANA CULTIVATION TO BE A NUISANCE

5  
6 The Board of Supervisors of the County of Riverside ordains as follows:

7 Section 1. FINDINGS AND PURPOSE. The Board of Supervisors finds and declares  
8 the following:

- 9 a. In 1996, the voters of the State of California approved Proposition 215  
10 (codified as California Health and Safety Code section 11362.5, and entitled  
11 “The Compassionate Use Act of 1996”).
- 12 b. The intent of Proposition 215 was to enable persons who are in need of  
13 marijuana for medical purposes to use it without fear of criminal  
14 prosecution under limited, specified circumstances. The proposition further  
15 provides that “nothing in this section shall be construed to supersede  
16 legislation prohibiting persons from engaging in conduct that endangers  
17 others, or to condone the diversion of marijuana for non-medical purposes.”  
18 The ballot arguments supporting Proposition 215 expressly acknowledged  
19 that “Proposition 215 does not allow unlimited quantities of marijuana to be  
20 grown anywhere.”
- 21 c. In 2004, the Legislature enacted Senate Bill 420 (codified as California  
22 Health and Safety Code sections 11362.7 et seq., and referred to as the  
23 “Medical Marijuana Program”) to clarify the scope of Proposition 215, and  
24 to provide qualifying patients and primary caregivers who collectively or  
25 cooperatively cultivate marijuana for medical purposes with a limited  
26 defense to certain specified state criminal statutes. Assembly Bill 2650  
27 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana  
28 Program to expressly recognize the authority of counties and cities to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

“[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

d. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...” Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana...” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

e. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

f. Marijuana cultivation in the unincorporated area of Riverside County can adversely affect the health, safety, and well-being of County residents. Countywide prohibition of marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

g. Marijuana cultivation at locations or premises within one thousand feet of schools, parks, and community centers creates unique risks that the marijuana plants may be observed by minors, and therefore be especially vulnerable to theft or recreational consumption by minors. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that minors will be involved or endangered. Therefore, any amount of marijuana cultivation in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

h. As recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

i. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

j. The County is committed to making efficient and rational use of its limited investigative and prosecutorial resources. There shall be a limited exemption from enforcement for violations of this ordinance by primary caregivers and qualified patients for small amounts of marijuana cultivation for their own medical use in zone classifications identified section 3.4 of Ordinance No. 348 when all of the conditions and standards in section 12 of

1 this ordinance are met.

2 Section 2. AUTHORITY. This ordinance is adopted pursuant to the authority granted  
3 by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, and  
4 Government Code sections 25845 and 53069.4.

5 Section 3. DEFINITIONS. As used in this ordinance, the following terms shall have  
6 the following meanings:

- 7 a. Abatement Costs. Any costs or expenses, including County staff time  
8 reasonably related to the abatement of conditions which violate this  
9 ordinance, and shall include, but not be limited to, enforcement,  
10 investigation, summaries, reports, notices, telephonic contact,  
11 correspondence, mailing expense, title search costs, administrative costs  
12 including scheduling and participation at hearings and meetings, Hearing  
13 Officer costs, expenses incurred by the County, court costs, civil or  
14 administrative penalties, collection, reasonable attorneys' fees, and other  
15 costs associated with the removal, abatement or correction of a violation.
- 16 b. Child Care Center. Any licensed child care center, daycare center, child  
17 care home, or any preschool.
- 18 c. Church. A structure or leased portion of a structure, which is used primarily  
19 for religious worship and related religious activities.
- 20 d. Community Center. Any facility open to the public at which classes,  
21 social activities, recreational activities, educational activities, support and  
22 public information are offered for all residents of the community.
- 23 e. Enforcement Officer. The Sheriff, the Transportation and Land  
24 Management Agency Director, Building Official, Code Enforcement  
25 Official, County Counsel, Environmental Health Department Director,  
26 Public Health Officer, Agricultural Commissioner, Fire Chief, Clerk of the  
27 Board of Supervisors, and their designees.
- 28 f. Family. One or more non-transient, related or unrelated persons living

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

together as a single, nonprofit housekeeping unit.

- g. Marijuana Cultivation. 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.
- h. Marijuana plant. Any mature or immature marijuana plant, or any marijuana seedling.
- i. Minor. A person under eighteen (18) years of age.
- j. Multiple-Family Dwelling. A building or portion thereof used to house two or more families, including domestic employees of each such family, living independently of each other, and each having their own kitchen.
- k. One-Family Dwelling. A building or detached structure, including a mobilehome or manufactured home, containing one kitchen and used to house not more than one family, including domestic employees.
- l. Park. A public playground, public recreation center or area, and other public areas, created, established, designated, maintained, provided or set aside by the County, any city, or any other public entity or agency, for the purposes of public rest, play, recreation, enjoyment or assembly, and all buildings and structures located thereon or therein.
- m. Premises. A single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single "premises" for purposes of this ordinance.
- n. Primary Caregiver. Shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.
- o. Qualified Patient. Shall have the meaning set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq.
- p. Responsible Party. (1) Each person committing the violation or causing a condition on a premises located within the jurisdiction of the County of

1 Riverside which violates this ordinance; (2) each person who has an  
2 ownership interest in that premises; or (3) each person who, although not an  
3 owner, nevertheless occupies or has a legal right or a legal obligation to  
4 exercise possession or control over that premises. In the event the person  
5 who commits the violation or causes the violating condition is a minor, then  
6 the minor's parents or legal guardian shall be deemed the responsible party.  
7 In the event the violation or violating condition is most reasonably  
8 attributable to a business, then that business, to the extent it is a legal entity  
9 such that it can sue and be sued in its own name, and each person who is an  
10 owner of that business shall be deemed responsible parties.

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

18 r. Youth-oriented Facility. Any facility that caters to or provides services  
19 primarily intended for minors, or the individuals who regularly patronize,  
20 congregate or assemble at the establishment are predominantly minors.

21 Section 4. PROHIBITIONS ON MARIJUANA CULTIVATION. NUISANCE  
22 DECLARED. Marijuana cultivation, either indoors or outdoors, fixed or mobile, upon any premises  
23 within all unincorporated areas of Riverside County is prohibited and hereby declared to be unlawful and  
24 a public nuisance that may be abated in accordance with this ordinance. The foregoing prohibition shall  
25 be imposed regardless of the number of qualified patients or primary caregivers residing at the premises  
26 or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed  
27 notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for  
28 qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Section 5. NOTICE TO ABATE UNLAWFUL MARIJUANA CULTIVATION.

Whenever the enforcement officer determines that a public nuisance as described in this ordinance exists on any premises within the unincorporated area of Riverside County, he or she is authorized to notify the owner of the premises and any other responsible party, through issuance of a "Notice to Abate Unlawful Marijuana Cultivation."

Section 6. CONTENTS OF NOTICE. The Notice to Abate Unlawful Marijuana

Cultivation set forth in section 5 of this ordinance shall be in writing and shall:

- a. Identify the owner(s) of the premises upon which the nuisance exists, as named in the last County Equalized Assessment Roll, and identify any other responsible party, if other than the owner(s), and if known or reasonably identifiable.
- b. Describe the location of such premises by its commonly used street address, giving the name or number of the street, road or highway and the number, if any.
- c. Identify such premises by reference to the assessor's parcel number.
- d. Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the enforcement officer to be a public nuisance described in this ordinance.
- e. Describe the unlawful marijuana cultivation that exists and the actions required to abate it.
- f. Contain a statement that the owner or responsible party is required to abate the unlawful marijuana cultivation within ten (10) calendar days after the date that said notice was served.
- g. Contain a statement that the owner or responsible party may, within ten (10) calendar days after the date that said Notice to Abate Unlawful Marijuana Cultivation was served, make a request in writing to the County Department that issued the notice for a hearing to appeal the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

determination of the enforcement officer that the conditions existing constitute a public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this ordinance.

h. Contain a statement that, unless the owner or responsible party abates the unlawful marijuana cultivation within the time prescribed in the Notice to Abate Unlawful Marijuana Cultivation, the enforcement officer shall abate the nuisance. It shall also state that the abatement costs may result in the imposition of a lien and special tax assessment against the premises for abatement costs related to enforcement of the this ordinance and abatement of the violative conditions.

i. The failure of the Notice to Abate Unlawful Marijuana Cultivation to set forth all required contents shall not affect the validity of the proceedings.

Section 7. SERVICE OF NOTICE. Unless otherwise specifically provided for in any

other section of this ordinance, notices shall be issued in the following manner:

a. Notices required pursuant to this ordinance may be served in any of the following methods:

1. Personal service; or
2. By posting a copy of the notice in a visible place on the premises and mailing a copy to the premises owner as such person's name and address appears on the last County Equalized Assessment Roll. If notice is mailed to a responsible party other than the premises owner then the notice may be mailed to the last known address. If the address of any such person is unknown, that fact shall be stated in the copy so mailed and it shall be addressed to the person at the county seat. Service shall be deemed complete five (5) calendar days after the date of deposit in the mail or five (5) calendar days after the date of posting, whichever is later.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

b. The failure of any premises owner or any other responsible party to receive such notice shall not affect the validity of the abatement proceedings.

Section 8. APPEAL HEARING BY COUNTY HEARING OFFICER.

- a. Any person upon whom a Notice to Abate Unlawful Marijuana Cultivation has been served may appeal the determination of the enforcement officer that the conditions set forth in the notice constitute a public nuisance, or may show cause why those conditions should not be abated in accordance with the provisions of this ordinance.
- b. Any such appeal shall be commenced by filing a written request for a hearing with the County Department that issued the Notice to Abate Unlawful Marijuana Cultivation within ten (10) calendar days after the date that said Notice was served. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcement officer contained in the Notice to Abate Unlawful Marijuana Cultivation shall become final and conclusive on the eleventh day following service of the notice.
- c. Upon timely receipt of a written request for hearing which complies with the requirements of this section, a hearing shall be set for a date not less than ten (10) calendar days, nor more than thirty (30) calendar days, from the date the request was filed. Written notice of the hearing shall be sent to the requesting party, to any other parties upon whom the Notice to Abate Unlawful Marijuana Cultivation was served, and to the enforcement officer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- d. The Board of Supervisors delegates its authority to conduct the hearing to the County Hearing Officer appointed by the Board of Supervisors pursuant to Ordinance No. 643 and Government Code section 27720.
- e. The County Hearing Officer shall have full authority and duty to preside over the hearing in the manner set forth in Ordinance No. 643.
- f. At the time fixed in the notice of hearing, the County Hearing Officer shall receive evidence from the enforcement officer and the owner of the premises, any other responsible party, or their representatives and any other concerned persons who may desire to present oral or documentary evidence regarding the conditions of the premises or other relevant matter, if such persons are present at the hearing. In conducting the hearing, the County Hearing Officer shall not be limited by the technical rules of evidence. Failure of the owner or responsible party to appear shall not affect the validity of the proceedings or order issued thereon.
- g. Upon conclusion of the hearing, the County Hearing Officer shall make his decision and in the event it so concludes, may declare the conditions on the premises to be in violation of this ordinance and to constitute a public nuisance. The County Hearing Officer may direct the owner or responsible party to abate the unlawful marijuana cultivation within ten (10) calendar days after mailing and posting of the County Hearing Officer's decision. The County Hearing Officer's decision shall include notice that if the unlawful marijuana cultivation is not abated as directed and within ten (10) calendar days, the enforcement officer may abate the unlawful marijuana cultivation and the abatement costs shall be a lien and an assessment against the premises. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the Notice to Abate Unlawful Marijuana Cultivation was served, and the enforcement officer.

- 1 h. The County Hearing Officer may continue the administrative hearing from  
2 time to time.
- 3 i. At the conclusion of the hearing, the County Hearing Officer shall submit  
4 his decision and the record to the Clerk of the Board.
- 5 j. The decision of the County Hearing Officer shall be final and conclusive.

6 Section 9. ABATEMENT BY OWNER OR RESPONSIBLE PARTY. Any owner or  
7 responsible party may abate the unlawful marijuana cultivation or cause it to be abated at any time prior to  
8 commencement of abatement by, or at the direction of, the enforcement officer.

9 Section 10. SUMMARY ABATEMENT. Notwithstanding any other provision of this  
10 ordinance, when any unlawful marijuana cultivation constitutes an immediate threat to public health or  
11 safety, and when the procedures set forth in sections 5 through 8 of this ordinance will not result in  
12 abatement of that nuisance within a short enough time period to avoid that threat, the enforcement officer  
13 may direct any officer or employee of the County to summarily abate the nuisance by removing and  
14 destroying the marijuana plants. The enforcement officer shall make reasonable efforts to notify the  
15 owner of the premises and any other responsible party, but the formal notice and hearing procedures set  
16 forth in this ordinance shall not apply. The County may nevertheless recover its abatement costs for  
17 abating that nuisance in the manner set forth in this ordinance.

18 Section 11. ENFORCEMENT. Whenever the enforcement officer becomes aware that  
19 an owner of the premises or any other responsible party has failed to abate any unlawful marijuana  
20 cultivation within ten (10) calendar days of the date of service of the Notice to Abate Unlawful Marijuana  
21 Cultivation, unless timely appealed, or of the date of the County Hearing Officer's decision requiring such  
22 abatement, the enforcement officer may take one or more of the following actions:

- 23 a. Enter upon the premises and abate the nuisance by County personnel, or by  
24 private contractor under the direction of the enforcement officer. The  
25 enforcement officer may apply to a court of competent jurisdiction for a  
26 warrant authorizing entry upon the premises for purposes of undertaking the  
27 nuisance abatement work by removing and destroying the marijuana plants,  
28 including any fixtures and other moveable property and equipment used for

1 marijuana cultivation, if necessary.

- 2 b. Request that the County Counsel commence a civil action to redress, enjoin,  
3 and abate the public nuisance.

4 Section 12. LIMITED EXEMPTION FROM ENFORCEMENT.

- 5 a. The County is committed to making efficient and rational use of its limited  
6 investigative and prosecutorial resources. There shall be a limited  
7 exemption from enforcement for violations of this ordinance by primary  
8 caregivers and qualified patients for small amounts of marijuana cultivation  
9 for their own medical use in zone classifications identified section 3.4 of  
10 Ordinance No. 348 when all of the following conditions and standards are  
11 complied with:

- 12 1. The premises shall contain a legally permitted one-family dwelling.
- 13 2. Cultivation of no more than twelve (12) marijuana plants per  
14 qualified patient. In the event a qualified patient has a primary  
15 caregiver cultivating marijuana plants for the qualified patient, only  
16 one primary caregiver may cultivate no more than twelve (12)  
17 marijuana plants for that qualified patient at any one time. In no  
18 circumstances shall a qualified patient have multiple primary  
19 caregivers cultivating marijuana plants for the qualified patient at  
20 the same time.
- 21 3. Two (2) qualified patient limit to aggregate marijuana plant count  
22 for a maximum total of twenty-four (24) marijuana plants per  
23 premises.
- 24 4. At least one qualified patient or one primary caregiver must live on  
25 the premises.
- 26 5. All marijuana plants must be reasonably secured to prevent access  
27 by minors or theft, to a standard satisfactory to the enforcement  
28 officer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6. All marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six feet in height. The fence must be adequately secure to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps, or cloth material shall not constitute an adequate fence under this subsection. Premises larger than five (5) acres are exempt from this fencing provision so long as all other standards and conditions of subsection a. of this section are complied with and any barriers used are otherwise consistent with Ordinance No. 457 and Ordinance No. 348.
7. Each building or outdoor area in which the marijuana plants are cultivated shall be set back at least ten (10) feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the building in which the marijuana plants are cultivated, or, if the marijuana plants are cultivated in an outdoor area, from the fence required by subsection 6. to the boundary line of the premises.
8. The designated marijuana cultivation area must not be visible from any public right-of-way.
9. If the person cultivating marijuana plants on any premises is not the owner of the premises, such person shall submit a letter from the owner(s) consenting to the marijuana cultivation on the parcel. This letter shall be examined by the enforcement officer, and shall then be returned to the submitter. The County shall prescribe forms for such letters.
10. Parolees or probationers shall not live on the premises unless the parolees or probationers have received confirmation from the court that he is allowed to use medical marijuana while on parole or probation pursuant to Health & Safety Code section 11362.795

1 which shall be subject to verification by the enforcement officer.

2 11. Qualified patients for whom the marijuana plants are being  
3 cultivated shall have valid Medical Marijuana Identification Cards  
4 issued by the Riverside County Department of Public Health. Any  
5 primary caregiver cultivating marijuana plants for a qualified patient  
6 shall have a copy of the qualified patient's valid Medical Marijuana  
7 Identification Card issued by the Riverside County Department of  
8 Public Health which shall be kept on the premises.

9 12. The address for the premises must be posted and plainly visible from  
10 the public right-of-way.

11 13. The marijuana cultivation shall not be within a multi-dwelling  
12 building.

13 14. The marijuana cultivation shall not be upon any premises located  
14 within one thousand (1,000) feet of any school, community center,  
15 or park.

16 15. The marijuana cultivation shall not be upon any premises containing  
17 a child care center, church, or youth-oriented facility.

18 b. Any marijuana cultivation that does not comply with all of the standards  
19 and conditions in subsection a. of this section is subject to nuisance  
20 abatement enforcement and administrative civil penalties as set forth in this  
21 ordinance.

22 Section 13. RECOVERY OF ABATEMENT COSTS AND ATTORNEYS' FEES.

23 a. In any enforcement action brought pursuant to this ordinance, whether by  
24 administrative proceedings, judicial proceedings, or summary abatement,  
25 each person who causes, permits, suffers, or maintains the unlawful  
26 marijuana cultivation to exist shall be liable for all abatement costs incurred  
27 by the County, and any and all costs incurred to undertake, or to cause or  
28 compel any responsible party to undertake, any abatement action in



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

compliance with the requirements of this ordinance, whether those costs are incurred prior to, during, or following enactment of this ordinance.

- b. In any action by the enforcement officer to abate unlawful marijuana cultivation under this ordinance, 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 subdivision shall be limited to those actions or proceedings in which the County elects, at the initiation of that action or proceeding, to seek recovery of its own 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 14. NOTICE OF ABATEMENT COSTS. At the conclusion of the abatement, the enforcement officer shall issue a bill setting forth the abatement costs to the owner of the premises and any other responsible party. The bill shall demand payment to the County of the total abatement costs within fifteen (15) calendar days of its mailing.

Section 15. SPECIAL ASSESSMENT AND LIEN.

- a. If the owner fails to pay the abatement costs upon demand by the County, the Board of Supervisors may order the abatement costs to be specially assessed against the premises under Government Code section 25845. The assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.
- b. If the Board of Supervisors specially assesses the abatement costs against the premises, the Board of Supervisors also may cause a Notice of

1 Abatement Lien to be recorded. The Notice of Abatement Lien shall, at a  
2 minimum, identify the record owner or possessor of the premises, set forth  
3 the last known address of the record owner or possessor of the premises, set  
4 forth the date upon which abatement of the nuisance was ordered by the  
5 County Hearing Officer, the date the abatement was complete, include a  
6 description of the premises subject to the lien, and the amount of the  
7 abatement cost.

8 Section 16. ADMINISTRATIVE CIVIL PENALTIES.

- 9 a. In addition to any other remedy prescribed in this ordinance, any  
10 nuisance as described in this ordinance may be subject to an  
11 administrative civil penalty of up to one thousand dollars (\$1000) per  
12 day. The administrative civil penalty may be imposed via the  
13 administrative process set forth in this section, as provided in  
14 Government Code section 53069.4, or may be imposed by the court if the  
15 violation requires court enforcement without an administrative process.
- 16 b. Acts, omissions, or conditions in violation of this ordinance that continue,  
17 exist, or occur on more than one day constitute separate violations on  
18 each day. Violations continuing, existing, or occurring on the service  
19 date, the effective date, and each day between the service date and the  
20 effective date are separate violations.
- 21 c. In the case of a continuing violation, if the violation does not create an  
22 immediate danger to health or safety, the enforcement officer or the court  
23 shall provide for a reasonable period of time, not to exceed ten (10) calendar  
24 days, for the person responsible for the violation to correct or otherwise  
25 remedy the violation prior to the imposition of the administrative civil  
26 penalty.
- 27 d. In determining the amount of the administrative civil penalty, the  
28 enforcement officer, or the court if the violation requires court enforcement

1 without an administrative process, shall take into consideration the nature,  
2 circumstances, extent, and gravity of the violation or violations, any prior  
3 history of violations, the degree of culpability, economic savings, if any  
4 resulting from the violation, and any other matters justice may require.

- 5 e. The enforcement officer may commence the administrative civil penalty  
6 process by issuance of a notice of violation and proposed administrative  
7 civil penalty, which shall state the amount of the proposed administrative  
8 civil penalty and the reasons therefore. The notice of violation and  
9 proposed administrative civil penalty shall inform the recipient of his right  
10 to request an appeal hearing in accordance with this section. The notice  
11 shall state that if such a hearing is not requested within ten (10) days of  
12 issuance of the notice of violation and issuance of the proposed  
13 administrative civil penalty, the proposed penalty shall become final and the  
14 recipient of thereof shall immediately make payment of the administrative  
15 civil penalty to the County. The notice of violation and proposed  
16 administrative civil penalty shall also state that if the administrative civil  
17 penalty is not timely paid or appealed then additional costs shall be assessed  
18 by the enforcement officer to recover administrative costs, including but not  
19 limited to costs of obtaining a title report, recording fees, noticing,  
20 scheduling and participating in further hearings, collection activities or  
21 other costs incurred to recover the administrative civil penalties. The notice  
22 of violation and proposed administrative civil penalty may be combined  
23 with a Notice to Abate Unlawful Marijuana Cultivation issued pursuant to  
24 Section 5. The notice of violation and proposed administrative civil penalty  
25 shall be served by mail addressed to all of the following: (i) the owner of  
26 the premises on which the violation exists, as named on the last County  
27 Equalized Assessment Roll, or as otherwise known to the enforcement  
28 officer; (ii) anyone other responsible party, if other than the owner(s), and if

1 known or reasonably identifiable; and (iii) any other person known to the  
2 enforcement officer who has caused, permitted, maintained, conducted, or  
3 otherwise suffered or allowed the violation to exist. The failure to serve  
4 any person described in this subsection shall not affect the validity of  
5 service or the validity of any penalties imposed upon any other person.

6 Section 17. APPEAL OF ADMINISTRATIVE CIVIL PENALTIES.

7 a. Notice of Appeal. The recipient of an administrative civil penalty may  
8 appeal its validity by filing a written Notice of Appeal with the County  
9 Department that issued the administrative civil penalty. The written Notice  
10 of Appeal must be filed within ten (10) calendar days of service of the  
11 administrative civil penalty. The Notice of Appeal shall be accompanied by  
12 either an advance deposit of the administrative civil penalty imposed or a  
13 Request for Advance Deposit Hardship Waiver as set forth below. Failure  
14 to properly file a written Notice of Appeal within this time period shall  
15 constitute a waiver of the right to appeal the administrative civil penalty.  
16 The Notice of Appeal shall be submitted on a form provided by the County  
17 Department that issued the administrative civil penalty and shall contain the  
18 following information:

- 19 1. A brief statement setting forth the appellant's interest in the  
20 proceedings;
- 21 2. A brief statement of the material facts which the appellant claims  
22 support a contention that no violation exists and that no  
23 administrative civil penalty should be imposed or that an  
24 administrative civil penalty of a different amount is warranted;
- 25 3. An address at which the appellant agrees that notice of any  
26 additional proceeding or an order relating to the imposition of the  
27 administrative civil penalty may be received by mail; and
- 28 4. The Notice of Appeal must be signed by the appellant under penalty

1 of perjury.

2 b. Advance Deposit Hardship Waiver.

- 3 1. Any person filing a Notice of Appeal to contest an administrative  
4 civil penalty and who is financially unable to make the advance  
5 deposit of the penalty as required, may submit a Request For  
6 Advance Deposit Hardship Waiver with the Notice of Appeal.
- 7 2. The Request For Advance Deposit Hardship Waiver shall be filed  
8 with the County Department that issued the administrative civil  
9 penalty on a form provided by the same County Department. The  
10 request shall be documented by a sworn affidavit, together with any  
11 supporting documents or materials, demonstrating to the satisfaction  
12 of the enforcement officer that the person's actual financial inability  
13 to deposit the full amount of the administrative civil penalty in  
14 advance of the hearing.
- 15 3. The requirement of depositing the full amount of the administrative  
16 civil penalty shall be stayed for ten (10) calendar days pending a  
17 determination by the enforcement officer of the approval or denial of  
18 the Request For Advance Deposit Hardship Waiver.
- 19 4. The enforcement officer shall issue a written determination stating  
20 the approval or listing the reasons for the denial of the Request For  
21 Advance Deposit Hardship Waiver. The written determination shall  
22 be mailed to the appellant at the address provided in the Request.
- 23 5. If the enforcement officer denies a Request For Advance Deposit  
24 Hardship Waiver, the appellant shall remit the deposit to the County  
25 within fifteen (15) calendar days of the date of mailing notice of the  
26 denial.
- 27 6. The written determination of the enforcement officer shall be final.

28 c. Hearing on Appeal of Administrative Civil Penalty. Upon receipt of a

1 timely filed Notice of Appeal of an Administrative Civil Penalty, an appeal  
2 hearing to consider the issuance of the administrative civil penalty shall be  
3 held before the County Hearing Officer, appointed by the Board of  
4 Supervisors pursuant to Ordinance No. 643 and Government Code section  
5 27720. The appeal hearing shall be conducted pursuant to the provisions set  
6 forth in section 8 of this ordinance.

7 d. County Hearing Officer's Decision. The County Hearing Officer shall issue  
8 a written decision following the appeal hearing, which shall be issued to the  
9 appellant at the appellant's address set forth in the Notice of Appeal. If the  
10 administrative civil penalty is determined to have been valid at the time of  
11 its issuance, the County Hearing Officer shall set the penalty amount  
12 pursuant to section 16 of this ordinance, and order said penalties to be paid  
13 within fifteen (15) calendar days of issuance of the County Hearing  
14 Officer's decision. The County Hearing Officer is authorized to order the  
15 penalties to be placed as a recorded lien against the premises subject to the  
16 administrative civil penalty and authorize the penalties to be placed as a  
17 Special Assessment on the County Tax Assessment Roll to be paid with  
18 County taxes, unless paid sooner. The County Hearing Officer's decision  
19 shall contain instructions for obtaining judicial review of the decision as set  
20 forth below.

21 e. Judicial Review of Administrative Hearing Officer's Decision On  
22 Administrative Civil Penalty.

23 1. Notice of Appeal of the Administrative Hearing Officer's Decision.  
24 Within twenty (20) calendar days of the date of issuance of the final  
25 decision, the appellant may contest an Administrative Hearing  
26 Officer's decision by filing an appeal in the Riverside County  
27 Superior Court. The fee for filing the appeal is specified in  
28 Government Code section 70615 (currently \$25.00) and shall be

1 paid to the Clerk of the Court. The failure to file the written appeal  
2 and to pay the filing fee within this period shall constitute a waiver  
3 of the right to an appeal and the decision shall be deemed final and  
4 confirmed. A copy of the Notice of Appeal of the Administrative  
5 Hearing Officer's Decision filed in the Riverside County Superior  
6 Court shall be served in person or by first class mail upon the  
7 County Department that issued the administrative civil penalty by  
8 the appellant.

9 2. Conduct of Hearing. The conduct of the appeal hearing is a  
10 subordinate judicial duty and may be performed by traffic trial  
11 commissioners and other subordinate judicial officials at the  
12 direction of the Presiding Judge of the Riverside County Superior  
13 Court. The appeal shall be heard de novo, and the contents of the file  
14 of the County Department that issued the administrative civil  
15 penalty shall be received into evidence. A copy of the Notice of  
16 Violation, administrative civil penalty and Hearing Officer's  
17 Decision shall be admitted into evidence as prima facie evidence of  
18 the facts stated therein. The Court shall request that the County  
19 Department's file be forwarded to the Court, to be received within  
20 fifteen (15) calendar days of the request.

21 3. Judgment. The Court shall retain the fee for filing the appeal  
22 regardless of the outcome of the appeal. If the Court finds in favor  
23 of the appellant, the amount of the fee shall be reimbursed to the  
24 appellant by the County in accordance with the judgment of the  
25 Court. If the penalty has not been deposited and the decision of the  
26 Court is against the appellant, the County Department that issued the  
27 administrative civil penalty may proceed to collect the penalty  
28 pursuant to the abatement cost recovery procedures set forth in this

1 ordinance.

2 Section 18. COLLECTION OF ADMINISTRATIVE CIVIL PENALTIES WHEN NO  
3 APPEAL HEARING IS REQUESTED.

- 4 a. If the administrative civil penalty are not timely paid and no Notice of  
5 Appeal is filed by the date set forth on the administrative civil penalty then  
6 additional costs shall be assessed by the enforcement officer to recover  
7 administrative costs. These administrative costs include, but are not limited  
8 to costs of obtaining a title report, recording fees, noticing, scheduling and  
9 participating in further hearings, reasonable attorneys' fees, collection  
10 activities or other costs incurred to recover the administrative civil  
11 penalties.
- 12 b. A "Notice Of Delinquent Administrative Civil Penalties and Special Tax  
13 Assessment" shall be issued to the owner of the premises and other  
14 responsible party who received the administrative civil penalty in the same  
15 manner as set forth in section 16 of this ordinance. Said notice shall  
16 provide an opportunity to request a hearing regarding only the amount of  
17 penalties to be assessed as a special tax assessment. The request for hearing  
18 shall be submitted to the County Department issuing the administrative civil  
19 penalty within twenty (20) calendar days of issuance of the Notice of  
20 Delinquent Administrative Civil Penalties and Special Tax Assessment and  
21 shall include the proper form to be used to request a hearing. Any hearing  
22 set pursuant to this subsection shall be conducted by the County Hearing  
23 Officer. If a request for hearing is not timely or properly submitted, the  
24 right to a hearing concerning the amount of penalties assessed shall be  
25 considered waived.

26 Section 19. ENFORCEMENT BY CIVIL ACTION. As an alternative to the procedures set  
27 forth in sections 5 through 8, the County may abate a violation of this ordinance by the prosecution of a  
28 civil action through the Office of County Counsel, including an action for injunctive relief. The remedy of



1 injunctive relief may take the form of a court order, enforceable through civil contempt proceedings or  
2 receivership, prohibiting the maintenance of the violation of this ordinance or requiring compliance with  
3 other terms.

4 Section 20. OTHER NUISANCE. Nothing in this ordinance shall be construed as a  
5 limitation on the County's authority to abate any nuisance which may otherwise exist from the planting,  
6 growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any  
7 location, indoor or outdoor, including from within a fully enclosed and secure building.

8 Section 21. TREBLE DAMAGES. Upon a second or subsequent civil or criminal judgment  
9 for violation of this ordinance within a two-year period, a violator shall be liable to the County for treble  
10 the abatement costs, in accordance with Government Code section 25845.5.

11 Section 22. MISDEMEANOR PENALTY. Any person violating any provision of this  
12 ordinance shall be guilty of a misdemeanor.

13 Section 23. NON-EXCLUSIVE REMEDIES AND PENALTIES. All remedies and  
14 penalties for the abatement of public nuisances provided for in this ordinance shall be cumulative and not  
15 exclusive. Enforcement by use of any administrative, criminal or civil action, citation or administrative  
16 proceeding or abatement remedy does not preclude the use of additional citations or other remedies as  
17 authorized by other ordinance or law. Enforcement remedies may be employed concurrently or  
18 consecutively. Conviction and punishment of or enforcement against any person hereunder shall not  
19 relieve such person from the responsibility of correcting, removing or abating a violation, nor prevent the  
20 enforced correction, removal or abatement thereof. Each and every day, or any portion thereof, during  
21 which any violation of this ordinance is committed, continued, or permitted by such person, shall be  
22 deemed a separate and distinct offense.

23 Section 24. SEVERABILITY. If any provision, clause, sentence or paragraph of this  
24 ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity  
25 shall not affect the other provisions of this ordinance which can be given effect without the invalid  
26 provision or application, and to this end, the provisions of this ordinance are hereby declared to be  
27 severable.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Section 25. EFFECTIVE DATE. This ordinance shall take effect thirty (30) calendar days after its adoption.

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA


By: \_\_\_\_\_  
Chairman

ATTEST:  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy  
  
(SEAL)

APPROVED AS TO FORM

May 6, 2015

By:   
TIFFANY N. NORTH  
Deputy County Counsel

G:\Property\TNorth\RCO No 348\... Marijuana\RCO No 925 re marijuana cultivation Final.doc