

ORDINANCE NO. 436

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN
AMENDING TITLE 8, OF THE ARVIN MUNICIPAL CODE AND ADOPTING
CHAPTER 8.29 PERTAINING TO MARIJUANA**

WHEREAS, in 1996, with the adoption of Proposition 215, the California voters approved the Compassionate Use Act (Health and Safety Code § 11362.5) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, without fear of criminal prosecution under limited, specified circumstances; and

WHEREAS, in 2004, the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act and provide additional statutory guidance regarding medical marijuana use. These statutes are codified at Health and Safety Code § 11362.7 et seq. and allow cities and counties to adopt supplemental rules and regulations; and

WHEREAS, on October 9, 2015, almost 20 years after passage of the Compassionate Use Act, the Governor signed the Medical Marijuana Regulation and Safety Act (“Act”), comprised of California legislative bills AB 243, AB 266, and SB 643. The Act creates a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis, all subject to local control. One of the purposes of the Act is to ensure uniformity among jurisdictions that wished to allow commercial marijuana operations; and

WHEREAS, on June 27, 2016, the Governor signed SB 837, effective immediately, changing the terms in the Act from “medical marijuana” or “marijuana” to “medical cannabis” or “cannabis”, and making other technical changes to the Act. SB 837 also adopted regulations relating to the use and diversion of water in connection with the cultivation of cannabis; and

WHEREAS, pending before the voter this November is the Adult Use of Marijuana Act (“AUMA”). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. Adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal use; and

WHEREAS, in 2010, the City adopted Title 17, Chapter 17.02.435 and 17.07.01, of the Arvin Municipal Code pertaining to Medical Marijuana Dispensaries (Marijuana Ordinance). The Marijuana Ordinance places a complete ban on dispensaries in the City based upon various health, safety and welfare and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

WHEREAS, at the time the City adopted the Marijuana Ordinance, the issue of recreational cultivation and commercial marijuana operations, such as manufacturing, testing and distribution, were not considered an area of concern in need of regulation. Now, with the adoption of the Act and AUMA if it passes, these other commercial marijuana operations are imminent; and

WHEREAS, clear guidance is required in the City's Municipal Code so there is no ambiguity; and

WHEREAS, the City of Arvin has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Kern County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, under the Act, and AUMA if it passes, the City retains its police powers and land use authority to regulate or ban marijuana activities, including commercial marijuana operations, cultivation, distribution and consumption for the health, safety, and welfare of the citizens of Arvin; and

WHEREAS, it is the intent of the City of Arvin to prohibit all outdoor cultivation of marijuana and regulate indoor cultivation of recreational marijuana should Proposition 64 pass.

NOW THEREFORE, the City Council of the City of Arvin does hereby ordain as follows:

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. Chapter 8.29, of Title 8, of the Arvin Municipal Code is added and adopted in its entirety to read as follows:

Chapter 8.29

MARIJUANA

Section 8.29.01 Purpose and Intent

It is the purpose and intent of this Chapter to promote the health, safety, morals, and general welfare of the residents and businesses within the City by regulating the cultivation, processing, extraction, manufacturing, testing, distribution, transportation, sale, and consumption of marijuana, whether for medical purposes as currently allowed under State law, or for recreational use should recreational use become lawful under State law.

Section 8.29.02 Definitions

For purposes of this Chapter, the following definitions shall apply:

- (a) "Act" means the Medical Marijuana Regulation and Safety Act, now called the Medical Cannabis Regulation and Safety Act, including implementing regulations, as the Act and implementing regulations may be amended from time to time. The terms Act, Medical Marijuana Regulation and Safety Act, Medical Cannabis Regulation and Safety Act, may be used interchangeably, but shall have, the same meaning.
- (b) "Cannabis" or "marijuana" shall have the meaning set forth in California Business and Professions Code section 19300.S(f). Cannabis and marijuana may be used interchangeably, but shall have the same meaning.

- (c) “Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and designated primary care givers to cultivate marijuana for medical purposes as may be allowed under the Compassionate Use Act, the Medical Marijuana Program Act, or the California Medical Cannabis Regulation and Safety Act adopted on October 9, 2015 with legislative bills AB 243, AB 266, and SB 643.
- (d) “Commercial marijuana operation” means any commercial cannabis activity as set forth in California Business and Professions Code section 19300.5(k) and allowed under the Act, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.
- (e) “Delivery” means the commercial transfer of medical or recreational use marijuana and marijuana products from a dispensary as well as the use of any technology platform that enables persons, whether qualified patients, caregivers, or recreational users, to arrange for or facilitate the transfer.
- (f) “Marijuana dispensary” or “dispensary” means any facility or location, whether fixed or mobile, and any building or structure, including vending machines, which distributes, sells exchanges, processes, delivers, gives away, or where cannabis is made available to, distributed by, or distributed to more than two persons.
- (g) “Marijuana products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (h) “Medical marijuana or medical marijuana use” means the use of cannabis for the purposes set forth in the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code sections 11362.5 and 11362.7 et seq.
- (i) “Recreational marijuana or recreational marijuana use” means all uses of cannabis not included within the definition of medical marijuana use.
- (j) “Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

Section 8.29.03 Regulations applicable to the cultivation of recreational marijuana.

To the extent recreational marijuana use becomes legal under State law and the City is required to allow the cultivation of recreational marijuana under State law, the rules set forth herein shall apply. Nothing in this section shall be interpreted to permit commercial marijuana operations or marijuana dispensaries otherwise prohibited by this chapter.

(a) State law limits:

The cultivation of recreational marijuana shall be subject to the limits set forth in any applicable State law and this Municipal Code.

(b) Personal use cultivation:

The outdoor cultivation of recreational marijuana is prohibited in any location within the City of Arvin.

Indoor cultivation of recreational marijuana shall only be allowed if authorized by State law and is cultivated by a person of at least twenty-one (21) years of age or older within his/her private residence or in an accessory building if the property is detached single family residential.

Cultivation of recreational marijuana for personal use shall be subject to the following requirements:

(1) Permit:

Recreational marijuana cultivation is prohibited in any location within the City of Arvin without a permit issued by the Community Development Director or designee. The permit shall be valid for one (1) years time from the date it was issued. City staff shall inspect the recreational marijuana cultivation prior to issuing or renewing a permit. City staff shall not issue nor renew a permit for a recreational marijuana cultivation that violates this Chapter.

The permit fee for recreational marijuana cultivation shall be set by resolution of the City Council of the City of Arvin.

(2) Area:

The recreational marijuana cultivation on any one parcel of real property is limited to one of the following areas:

- (i) One secured room within a detached single family dwelling that does not exceed thirty-two (32) square feet; or
- (ii) One detached, outdoor structure, enclosed and covered, where the cultivation is concealed from view, and where the cultivation area does not exceed thirty-two (32) square feet.

This limit applies regardless of the number of persons residing in the residence. The cultivation area shall be a single designated area.

(3) Lighting:

Recreational marijuana cultivation lighting shall not exceed a total of 1200 watts.

(4) Building Code Requirements:

Any alterations or additions to the residence, including garages and accessory buildings, for marijuana cultivation shall be subject to applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, set back, height requirements, and parking requirements.

Any alterations or additions shall be inspected and approved by City staff prior to any recreational cultivation of marijuana.

(5) Safety Materials:

The recreational marijuana cultivation area shall have a minimum of one working smoke detector/fire alarm, one carbon monoxide detector/alarm, or one combination smoke and carbon monoxide detector, and one fire extinguisher.

(6) Security:

The recreational marijuana cultivation area shall be secured in such a manner so as to prevent only the permitted cultivator to access the marijuana.

The cultivated recreational marijuana shall be stored in such a manner so as to secure the marijuana from theft and prevent anyone under the age of twenty-one (21) from accessing the cultivate recreational marijuana. Any window or entry way into the recreational marijuana cultivation area must be alarmed such that an occupant in other locations of the residence will be alerted in the event of unauthorized entry.

(7) Gas Products:

The use of gas products (CO₂, butane, propane, natural gas, etc.) for recreational marijuana cultivation or processing is prohibited.

(8) Evidence of Cultivation:

From a public right of way, other public space, or neighboring properties there shall be no exterior evidence of marijuana cultivation occurring on the site, including odors associated with cultivation.

(9) Residence:

The individual engaged in cultivation shall reside full time in the residence where the marijuana cultivation occurs.

(10) Cultivation elsewhere in City:

The individual shall not participate in marijuana cultivation in any other location within the City of Arvin.

(11) Incidental use:

The residence shall maintain a minimum of one kitchen, one bathroom, and one primary bedroom for their intended use and not to be used for recreational marijuana cultivation.

(12) Ventilation:

The marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the residence, or property line for detached single family residential, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana. This shall include at a minimum, a system meeting the requirements of the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)).

(13) Storage of Chemicals:

Any chemicals used for recreational marijuana cultivation shall be stored outside of the habitable areas of the residence and outside of public view from neighboring properties and public rights of way. All chemicals not authorized by their manufacturer for indoor use are prohibited to be used or stored within the recreational marijuana cultivation area. All chemicals must be stored, and used, as directed by the manufacturer.

(14) Nuisance:

The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; and not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.

(15) Property Owner Authorization:

Unless the individual cultivating recreational marijuana is an owner of the residence, the written authorization of a property owner or property management company must be obtained prior to the cultivation of recreational marijuana. The authorization shall be on a form provided by the Community Development director or designee. The written authorization shall include, but is not limited to, the name of the individual intending to cultivate recreational marijuana, name of the property owner/property manager authorizing the cultivation,

the exact location of the recreational marijuana cultivation area, the notarized signature of the property owner/property manager authorizing the cultivation of recreational marijuana, and the penalties for failing to comply with the requirements of this Chapter. Such written authorization is required prior to the issuance of a permit or renewal of a permit.

(16) Police Department Notification:

Prior to obtaining a permit from the Community Development department for cultivation of recreational marijuana, applicants shall provide evidence they have informed the Police Department of the intent to cultivate marijuana, provided an address of the residence where the cultivation is proposed to occur, provided a depiction or diagram of the cultivation area within the residence, and have received a handout setting forth the owner and lessee responsibilities under this Chapter.

(17) Additional Requirements for Accessory Buildings:

The following additional requirements shall apply for personal use marijuana cultivation that occurs in an accessory building: the accessory building shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The accessory building shall include a burglar alarm monitored by an alarm company or private security company. The accessory building, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through an open door.

(18) Posting:

For rental properties, a copy of the property owner or property manager's written authorization to cultivate recreational marijuana shall be posted in a conspicuous place in the cultivation area.

(d) Collective or Cooperative Cultivation:

The collective or cooperative cultivation of marijuana shall be prohibited in the City.

(e) Marijuana Dispensaries.

Marijuana dispensaries as defined in Section 8.29.02(f) are prohibited within the City.

(f) Deliveries.

The delivery of marijuana as defined in Section 8.29.02(e) is prohibited in the City regardless of whether the delivery is initiated within or outside of the City, and regardless of whether a technology platform is used for delivery by the dispensary.

Section 8.29.04 Additional Regulations applicable to the cultivation and use of medical marijuana.

[RESERVED]

Section 8.29.05 Regulations applicable to commercial marijuana operations.

[RESERVED]

Section 8.29.06 Regulations applicable to the consumption of marijuana.

No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, within the city limits of the City of Arvin, unless such smoking, ingesting or consumption occurs entirely within a private residence. "Within a private residence" shall mean inside habitable areas and shall not include garages, whether attached or detached, and other accessory buildings unless those buildings are at all times fully enclosed during the consumption.

Medical marijuana may also be consumed within a clinic, health care facility, residential care facility, or residential hospice licensed pursuant to applicable provisions of the California Health and Safety Code.

All consumption shall be done in a manner so as to not cause a nuisance to nearby residents with noxious odors or other adverse health and safety impacts.

Section 8.29.07 Violations.

The establishment, maintenance, operation, consumption, cultivation, delivery or dispensary of marijuana, in violation of this Chapter, within the City, is declared to be a public nuisance and subject to abatement.

Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is committed, continued, or permitted by such person and shall be punished accordingly.

In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the City Attorney may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense.

In addition to the penalties provided by this Chapter, any condition caused or permitted to exist in violation of any of the provisions of this Chapter, or the provisions of any Chapter adopted by reference by this Code, shall be deemed a public nuisance and may be summarily abated by the City, and each day such condition continues shall be recorded as a new and separate offense.

Section 8.29.08 Criminal Penalties and Enforcement.

Violations of this Chapter for conduct that is not otherwise considered lawful under State law, shall be considered misdemeanors and are punishable in accordance with Chapter 1.08.010(B) of the Municipal Code. Each and every day, or portion thereof, a violation exists is a separate offense. The City may also pursue all applicable civil and administrative remedies, including but not limited to injunctive relief and administrative citations.

Should a court of competent jurisdiction subsequently determine that the criminal penalty provision renders this Chapter unlawful, the City intends that the misdemeanor provision be severable from the remaining penalty provisions and the City will only pursue non-criminal remedies for violations of this Chapter.

Section 8.29.09 Administrative Penalties.

With the exception of violations that are automatically deemed infractions under the Municipal Code, the administrative citation penalty for each and every marijuana plant cultivated or maintained in violation of this Chapter within a rolling twelve-month period shall be as follows:

- (1) First administrative citation: two hundred fifty and no/100ths dollars (\$250.00) per marijuana plant;
- (2) Second administrative citation: five hundred and no/100ths dollars (\$500.00) per marijuana plant;
- (3) Third administrative citation: one thousand and no/100ths dollars (\$1,000.00) per marijuana plant; and
- (4) One thousand and no/100ths dollars (\$1,000.00) per marijuana plant for each subsequent administrative citation.

With the exception of violations that are automatically deemed infractions under the Municipal Code, the administrative citation penalty for all other violations of this Chapter within a rolling twelve-month period shall be as follows:

- (1) First administrative citation: two hundred fifty and no/100ths dollars (\$250.00) per violation;
- (2) Second administrative citation: five hundred and no/100ths dollars (\$500.00) per violation;
- (3) Third administrative citation: one thousand and no/100ths dollars (\$1,000.00) per violation; and
- (4) One thousand and no/100ths dollars (\$1,000.00) per violation for each subsequent administrative citation.

Section 8.29.010 Notification of Abatement.

(a) Notice to Owner.

Except when the City elects to enforce through another process, such as through an administrative citation process, whenever the City or such City official having enforcement authority determines that property within the City is cultivating recreational marijuana in violation of this Chapter and seeks to abate the same, the enforcement official shall give written notice to the owner of the property and/or lessee of the property stating the violations with reference to the applicable code sections.

(b) Time to Correct.

The notice shall set forth a reasonable time limit for correcting the violation(s) and may also set forth suggested methods of correcting the same. Reasonable time to correct shall be dependent on the type and severity of the violation. The reasonable time to correct may, at the sole discretion of the City or such City official having enforcement authority over the violation, be extended or shortened.

(c) Service of Notice.

Notice shall be given either by personal service or by depositing the notice in the United States mail, postage prepaid, addressed to the property address of the residence. A copy may also be provided to the owner of such lot or parcel of land either by personal service or by depositing the notice in the United States mail, postage prepaid, to the name and address as it appears on the last available equalized assessment roll, supplemental roll of the County of Kern. If no such address appears, then a copy of the notice may be mailed to the property address, and is presumed to be notice to the owner. In order for an absentee owner to be subject to the penalties and costs described in this Chapter, notice must be provided by any method authorized by this subsection.

A copy of the notice may also be posted on the property in a conspicuous place. Where known, a copy may also be provided to the owner or occupant by email in the City's discretion. The failure of any person to receive the notice required by this section shall not affect the validity of any proceedings taken under this Chapter.

The notice shall bear the date of personal service or mailing and shall be in substantially the following form:

NOTICE TO ABATE PROPERTY NUISANCE

Site Address:

Assessor Parcel Number:

Date:

Notice is hereby given that the above-described property is a public nuisance in violation of the following codes: [set forth applicable code(s)]. A nuisance exists because [describe the nuisance]. You must abate the nuisance within [set forth applicable days]. There will be no further notice.

If the nuisance is not removed within the required time, the nuisance may be abated by the City of Arvin or a contractor hired by the City to remove the nuisance. The property owner will be billed for the cost of such abatement plus administrative fees. In addition, the property owner or other responsible party may be issued a citation and/or billed for the City's enforcement costs.

If you receive an invoice from the City for abatement, you will have fifteen (15) days from the issuance to pay the invoice. If you do not to pay the invoice within 15 days, the unpaid amount will be added to your property taxes as a special assessment against your property.

All persons having any objections to the proposed abatement may file an appeal in accordance with [identify code section]. The appeal must be in writing, filed with the City Clerk at 200 Campus Drive, Arvin, California, and received within [specify number of days] from the date of this Notice. The appeal must state the basis for the appeal with sufficient specificity so that the hearing officer or Board of Appeals can understand the basis for the appeal and must include the name, address, and telephone number of the person filing the appeal. Failure to file a timely appeal will result in the City proceeding with the work required at your expense in a timely fashion without further notice or hearing.

If the nuisance condition(s) create an imminent danger to the public, the appeal may be considered after abatement of the nuisance.

DATED: this _____ day of _____, 20__.

[ENFORCEMENT OFFICIAL NAME AND TITLE]

CITY OF ARVIN, CALIFORNIA

(d) Calendar Days.

Unless otherwise specified, days as used in this article shall mean calendar days.

Section 8.29.011 Method of Abatement by the City.

City abatement of the nuisance may be performed by contract or by City crews. When the abatement is performed by contract, the contractor shall keep an account of the cost of the abatement on each separate parcel of land where work is performed, including adjoining sidewalk and street/alley areas, and shall submit an itemized written report showing such cost to the enforcement official for verification. When

the abatement work is performed by City crews, the City shall keep an account of the cost of the abatement on each separate parcel of land where work is performed, including adjoining sidewalk and street/alley areas, and shall submit an itemized report showing such cost to the enforcement official for verification.

Section 8.29.012 Cost Recovery.

The City may recover its abatement and enforcement costs. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

For the purpose of this Chapter the following additional definitions apply:

(a) Abatement Costs.

The actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including, but not limited to, investigation costs, costs to enforce the Municipal Code and any applicable Federal, State or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include staff costs, administrative overhead, costs for equipment, such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by the City. Costs also include those incurred in seeking cost recovery. Abatement costs may be established in the Master Administrative Fee Schedule.

(b) Enforcement Costs.

Enforcement costs shall include all actual and reasonable costs incurred by the City to enforce compliance with the Municipal Code and any applicable Federal, State, County or City public health and safety law that are not included within abatement costs. These enforcement costs include, but are not limited to, actual cost of the enforcing department services including, but not limited to, costs of personnel, including costs of worker's compensation benefits, fringe benefits, administrative overhead, costs of equipment, costs of materials, costs related to investigations pursuant to the Municipal Code or Federal, State or County law, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal Code or Federal, State or County law violations, and reasonable attorneys' fees. Enforcement costs include multiple response and similar costs as permitted by this chapter. Costs also include those incurred in seeking cost recovery.

(c) Penalties.

Penalties for purposes of this Chapter do not include criminal fines.

(d) Record Owner.

The person to whom land is assessed as shown on the last available equalized assessment roll, supplemental roll of the County, or as otherwise known to the enforcement official or his/her designee by virtue of more recent or reliable information.

(e) Responsible Party.

A person or entity identified by the Municipal Code or law as responsible for creating, causing, committing, or maintaining the violation of the Municipal Code or law and/or responsible for the abatement of a Municipal Code or law violation, including public nuisance, as defined in this section.

(f) Subject Property.

The real property that is the subject of any enforcement or abatement action by the City for which the City incurred costs sought to be recovered under this Chapter.

Section 8.29.013 Abatement and Enforcement Costs and Penalties.

(a) Special Assessment and Lien or Personal Obligation.

The cost of abating a public nuisance and/or enforcing this Chapter or applicable Federal, State or County law shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property and/or the person responsible for creating, causing, committing or maintaining the public nuisance or violating this Chapter or Federal, State or County law. If there is more than one responsible party, each responsible party shall be jointly and severally liable for the costs. Costs incurred by the City are recoverable even if a public nuisance, Municipal Code, or other law violation is corrected by the property owner or other responsible party.

(b) Applicability.

This article shall govern the procedures used to recover all abatement and enforcement costs incurred by the City in the abatement of a public nuisance or violation of this Chapter and/or the enforcement of this Chapter or other law pursuant to the procedures and authority found in the Municipal Code. Additionally, this article shall govern the procedures used to recover administrative penalties and costs as well as multiple response costs imposed pursuant to the procedures and authority found in the Municipal Code.

(c) Cumulative Remedies.

The remedies provided in this article shall be cumulative to any other provided in the Municipal Code or by law.

(d) Payment Plan.

Nothing in this article shall prevent the City at any time from accepting payment for unpaid costs or penalties in whole or by way of a payment plan.

Section 8.29.014 Invoice of Costs.

(a) Accounting.

The enforcing department shall keep an itemized account of the abatement and/or enforcement costs incurred by the City. Those costs shall be detailed in a report that includes a description of the abatement and/or enforcement action taken by the City; a statement as to whether the monies to be collected are abatement costs, enforcement costs, or penalties; and where applicable a description of the subject property. Any such report may include costs or penalties on any number of properties, whether or not contiguous to each other.

(b) Applicability.

The enforcing department shall invoice the noticed party for the costs incurred by the City, except that an invoice is not necessary for administrative citations and other fixed penalties where notice of the penalty and an opportunity for appeal of the underlying violation has been provided.

(c) Invoice.

The invoice shall notify the noticed party of the following:

- (i) A description of the abatement or enforcement action taken by the City, where applicable a description of the property subject to the abatement or enforcement, and the total amount of the costs incurred by the City. The requirements of this subsection may be met by providing the noticed party with a copy of the report required by subsection (a) of this section.
- (ii) That should the noticed party fail to pay the costs within thirty (30) days from the date of service of the invoice the costs may be collected in any or all of the following ways: by a collection agency as a personal obligation, by the City Attorney's Office through judicial action, or as a special assessment and lien attached to the subject property.
- (iii) That the noticed party has a right to administrative review of the accounting of the costs incurred by the City by filing a written request for such review with the City Clerk within fifteen (15) days of the date of the invoice, and that a failure to request administrative review will be deemed a waiver of a right to review of the amount of the costs.

(iv) That before a special assessment is placed on the subject property, the costs will be confirmed by the City Council and a notice will be issued at least fifteen (15) days before the Council meeting.

(v) That the invoice may be recorded as a Notice of Costs or Penalties in the Kern County Recorder's Office.

(d) Recording.

The enforcing department may record the invoice as a Notice of Costs or Penalties in the Kern County Recorder's Office. Once payment is received for the outstanding costs and/or penalties, or any reduction of costs following administrative review, and no further action will be taken under this article, the enforcing department shall record a Notice of Satisfaction.

Section 8.29.013 Administrative Review of Costs.

(a) Right to Administrative Review.

A noticed party shall have the right to administrative review of the accounting of the costs incurred by the City by filing a written request for such review with the City Clerk within fifteen (15) days of the date of the invoice. A failure to timely request administrative review will be deemed a waiver of a right to review of the amount of the costs.

(b) Procedures for Administrative Review.

If a request for administrative review is timely filed, the City Clerk shall deliver a copy of the accounting report, invoice, and request for administrative review to the Hearing Officer or his/her designee, which may include the appointment of a hearing officer, who shall set a date and time to review the accounting report and invoice with the requesting party. The administrative review shall be an informal proceeding where the enforcement department and requesting party may present any evidence they deem pertinent to the amount of the costs. The scope of review shall be limited to the amount of the costs unless there has been no opportunity for a hearing on the underlying violation.

(c) Hearing Officer Decision.

The Hearing Officer may affirm or reduce the costs if he/she determines that they are not supported by the evidence or upon a showing that the costs were unnecessary or unreasonable. The Hearing Officer will not pass upon the validity of the underlying enforcement action or the amount of any penalties unless there has been no opportunity for a hearing of the underlying action. The Hearing Officer decision shall be memorialized in writing. The City Manager or his/her designee may approve a payment plan for the costs.

(d) Time for Payment.

The requesting party shall have thirty (30) days from the date of the Hearing Officer's decision to pay the costs, unless a payment plan is approved, in which case the costs shall be paid in accordance with the payment plan.

(e) Prior Hearing.

There is no right to administrative review if the costs have already been approved by a court of competent jurisdiction. There is no right to administrative review to confirm costs under this section if they have been previously upheld in an abatement or other administrative hearing held under the Municipal Code.

Section 8.29.014 Recovery of Penalties.

Administrative penalties unpaid after the required time set forth in the Municipal Code, or within fifteen (15) days from the final decision after an appeal, may be collected in the manner set forth in this article except the City is not required to send an invoice under Section 8.29.012. Interest shall accrue at a rate of ten percent (10%) per year on unpaid penalties until paid. Penalties and interest may only be made a lien or special assessment upon a subject property when the record owner of the property was issued and properly noticed with the citation or other basis for the penalty.

Section 8.29.015 Recovery of Abatement and Enforcement Costs.

Abatement and enforcement costs unpaid after the required time set forth in this Chapter may be collected in the manner set forth in this article. To collect costs under these procedures, the City must send an invoice under Section 8.29.012. Interest shall accrue at a rate of ten percent (10%) per year on unpaid costs until paid.

Section 8.29.016 Personal Obligation.

Any costs or penalties subject to collection under this Chapter may be recovered as a personal obligation against the responsible party and may be referred to a collection agency or the City Attorney's Office for collection. Upon referral of these costs and obligations, the collection agency and the City Attorney's Office may seek collection through any legal means provided to them, including judicial action. Nothing in this section shall be affected by or affect the City's use of any other procedure provided in this article or by law to collect unpaid costs and penalties. In a judicial action to recover abatement costs, the City Attorney's Office may elect to recover attorneys' fees. In any action in which the City Attorney's Office elects to recover attorneys' fees under this section, attorneys' fees will be recovered by the prevailing party.

Section 8.29.017 Special Assessment and Lien.

(a) Collection.

Unpaid penalties, abatement costs, and enforcement costs that relate to a property related violation may be confirmed by the City Council

as a special assessment and collected with property taxes or as a judgment lien.

(b) Notice.

Notice of a public meeting to confirm the penalties and/or costs shall be provided to all noticed parties by the enforcing department or City Clerk at least fifteen (15) days before the meeting. The notice shall: (i) contain a description of the subject property sufficient to enable the person(s) served to identify it; (ii) shall state that the City intends to collect unpaid costs or penalties by placing a lien or a special assessment on the subject property; (iii) shall specify the day, hour and place where the Council will hear and pass upon the penalties and/or costs; (iv) shall specify that the property may, in some cases, be sold after three (3) years by the Tax Collector pursuant to Revenue and Tax Code Section 3691 for unpaid delinquent assessments or be subject to judicial foreclosure before the three (3) years; and (v) shall specify that any noticed party may appear at the Council meeting and present objections to the lien or assessment.

(c) Service of Notice.

Notice shall be given either by personal service or by depositing the notice in the United States mail, postage prepaid, addressed to the owner of such lot or parcel of land and/or lessee as it appears on the last available equalized assessment roll, supplemental roll of the County of Kern, or as otherwise known to the City by virtue of more recent or reliable information. If no address appears or is known to the City, then a copy of the notice may be mailed to the property address. A copy of the notice may also be posted on the property in a conspicuous place. Where known, a copy may also be provided by email. The failure of any person to receive the notice required by this section shall not affect the validity of any proceedings taken under this Chapter.

(d) Confirmation by City Council.

During the Council meeting the Council may adopt a resolution confirming the amount of the penalties and costs, or any lesser amount, based upon staff reports and any public comments received during the meeting. The City Council shall take into consideration whether any noticed party sought administrative review of the costs and shall only reduce the costs if (i) the noticed party sought administrative review, and (ii) the decision of the General Services Director is not supported by substantial evidence in the record. The basis for the code enforcement action will not be the subject of the Council's consideration.

Where the costs have already been approved by a court of competent jurisdiction or the penalties have been previously upheld in an abatement or other administrative hearing held under the Municipal Code, the Council shall simply confirm the costs or penalties.

The Council may confirm the costs for more than one property in a single resolution. If the Council confirms the costs, the procedures set forth in this section may be utilized.

(e) Time to Contest Confirmed Special Assessment or Lien.

The validity of any special assessment or lien levied under the provisions of this section shall not be contested in any action or proceeding unless such action or proceeding is commenced within thirty (30) days after the special assessment is confirmed by the City Council.

(f) Recording.

Immediately upon the Council's confirmation of costs or penalties, the City Clerk shall record a Notice of Special Assessment and Lien in the Kern County Recorder's Office, which shall constitute a lien on that property for the amount of the assessment, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes that included the special assessment imposed under this section would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of abatement and enforcement relating to the property shall be transferred to the unsecured roll for collection.

(g) Form of Notice of Special Assessment and Lien.

The Notice of Special Assessment and Lien for recordation shall be in the form substantially as follows:

NOTICE OF SPECIAL ASSESSMENT AND LIEN

(Claim of the City of Arvin)

Under authority vested by provision of Chapter __, Article __, of the Arvin Municipal Code, the City of Arvin did on or about the __ day of _____, 20 __, assess [describe penalties, abatement costs, enforcement costs] on the real property hereinafter described; and the same has not been paid nor any part thereof and the City of Arvin does hereby claim a lien for such [penalties, abatement costs, and enforcement costs] to wit: the sum of _____ dollars, plus legal rate

of interest to be accrued from the date of recording this lien, and any and all administrative costs to file and record the lien. The same shall be a lien upon the real property until it has been paid in full and discharged of record.

The real property hereinafter mentioned, upon which a lien is claimed, is that certain parcel of land in the City of Arvin, County of Kern, State of California, more particularly described as follows:

DATED: this ___ day of _____, 20__

_____ City of Arvin

(Job Title)

(h) Collection with Taxes.

After confirmation and recordation, a copy may be turned over to the Kern County Tax Collector. At that point, it will be the duty of the Tax Collector to add the amounts of the respective assessments to the next regular tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and procedures and sale in the cases of delinquency as provided for with ordinary municipal taxes.

(i) Foreclosure.

After confirmation and recording, the lien may be also be foreclosed by judicial or other sale in the manner and means provided by law. The City may recover from the record property owners any costs incurred regarding a foreclosure action.

(j) Priority.

A special assessment and lien imposed under this section shall have the priority of a tax lien, unless prohibited by State law, in which case the special assessment and lien shall have the priority of a judgment lien.

(k) Release of Lien.

Once payment in full is received for the special assessment and lien, including applicable penalties, administrative fees and interest charges; or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order; or the City has entered into some other arrangement with the property owner for satisfaction of the assessment; the enforcing department shall either record a Notice of Satisfaction or provide the property owner or financial institution

with the Notice of Satisfaction so they can record the Notice with the Kern County Recorder's Office.

(l) Refund.

The Council may order a refund of all or part of a tax paid pursuant to this section if it finds that all or part of the tax has been erroneously levied. A tax or part thereof shall not be refunded unless a claim is filed with the City Clerk in accordance with the City's claim filing requirements, and in no event later than November 1st after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his/her guardian, executor or administrator.

Section 8.29.018 Judicial Review.

Judicial review of a decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.

Section 8.29.019 Severability

If any article, section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Chapter. The Council hereby declares that it would have adopted this chapter and adopted each article, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption, and immediately prior to the effective date of, and contingent upon, passage of Proposition 64. Within fifteen (15) days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

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I **HEREBY CERTIFY** that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 18th day of October 2016, and adopted the Ordinance after the second reading at a regular meeting held on the 01st day of November 2016, by the following roll call vote:

AYES: CM Robles, CM Gurrola, MPT Madrigal, Mayor Flores

NOES: _____

ABSTAIN: _____

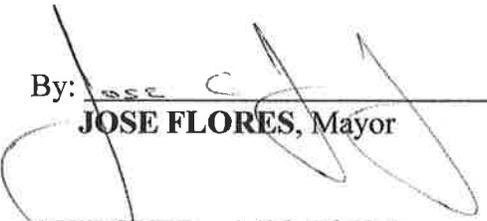
ABSENT: CM Ortiz

ATTEST

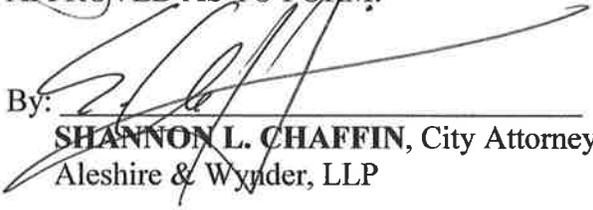


CECILIA VELA, City Clerk

CITY OF ARVIN

By: 
JOSE FLORES, Mayor

APPROVED AS TO FORM:

By: 
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.