

ORDINANCE NO.4374

ORDINANCE CREATING CHAPTER 8.76 OF THE MENDOCINO COUNTY CODE ESTABLISHING NUISANCE ABATEMENT PROCEDURES SPECIFIC TO CANNABIS CULTIVATION

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

Section 1. Chapter 76 of Title 8 of the Mendocino County Code is created to read as follows:

8.76 – ABATEMENT PROCEDURE FOR NUISANCES CAUSED BY CANNABIS CULTIVATION

8.76.010. Findings, Purpose and Authority.

The Board of Supervisors of Mendocino County finds that effective abatement of nuisances caused by cultivation of cannabis requires a more expedient set of procedures than those otherwise appropriate for other types of nuisances as laid out in Mendocino County Code chapter 8.75. This chapter is enacted pursuant to Government Code Sections 25843 and 53069.4 to address the unique circumstances related to abatement of nuisances caused by cannabis cultivation.

8.76.020. Definitions.

The definitions set forth in Chapter 8.75 of this Code shall also apply to this Chapter with the exception of the term “Chapter”, which instead shall refer to Chapter 8.76 for the purposes of this Chapter.

8.76.030. Scope of Chapter.

When a public nuisance is declared, which is caused by the cultivation of cannabis, such as a nuisance declaration made pursuant to Section 9.31.130 of this Code, the procedures in this Chapter may be applied.

8.76.040. Summary Abatement.

After a public nuisance is declared, the nuisance may be summarily abated by any reasonable means and without notice or hearing when immediate action is necessary to preserve or protect the public health or safety. Summary abatement shall be carried out in accordance with the provisions of Mendocino County Code section 8.75.070.

8.76.050. Standard Abatement.

Whenever an Enforcement Officer declares or determines that a public nuisance has been declared pursuant to this Chapter and exists within the unincorporated area of Mendocino County, he or she may alternatively utilize the abatement procedures provided by Chapter 8.75 of this Code.

8.76.060. Administrative Order to Show Cause.

As an alternative to the uniform abatement procedures provided in Chapter 8.75, the Enforcement Officer may instead utilize the provisions of this Chapter, starting with the issuance of a notice and administrative order to show cause. The notice and order to show cause shall:

- A. Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable.
- B. Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property.
- C. Identify such property by reference to the assessor's parcel number.
- D. Contain a statement describing the unlawful conditions existing on the premises that caused the declaration of a public nuisance, and that also describes the actions required to abate it.
- E. Contain a statement that the owner or occupant is required to abate the unlawful conditions caused by cannabis cultivation within five (5) calendar days after the date that said notice was served.
- F. Notify the recipient(s) that, unless the owner or occupant abates the conditions, a hearing will be held before a hearing officer appointed in accordance with this Chapter to determine whether there is any good cause why these conditions should not be abated.
- G. Specify the date, time, and location of the hearing to be held before a hearing officer, or state that the date, time and location of the hearing will be specified in a subsequent notice.
- H. State that the owner or occupant will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this chapter, or whether there is any other good cause why those conditions should not be abated.

- I. Contain a statement that, unless the owner or occupant abates the conditions, or shows good cause before the Hearing Officer why the conditions should not be abated, the enforcing officer, his or her Department, or other authorized designee will cause to be done whatever work is necessary to abate the nuisance.
- J. State that the abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.

8.76.070. Service of Notice and Order to Show Cause.

The notice and order to show cause shall be served on each Owner and on each Occupant, if known to the Enforcement Officer, of the subject property, in the following manner:

- A. By posting a copy of the notice in a conspicuous place in front of or on the real property on which, or in front of which, the nuisance exists, or if the property has no frontage upon any street, highway, or road, then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property; and
- B. By either personal service, or by United States mail, first class or overnight, or by overnight courier service. If by mail or courier service, then postage shall be prepaid with a certificate of mailing requested, and shall be addressed to each Owner at the address shown on the last equalized assessment roll or last known address according to the County Assessor, and addressed to each Occupant known to the Enforcement Officer at the street address of the subject property.
- C. Date of service shall be deemed to be the date of personal service, or five (5) days after delivery by United States first class mail, or one (1) day after overnight delivery by either the United States mail or courier service.
- D. If the notice and order are properly and timely served, the failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings conducted herein.

8.76.080. Automatic Hearing Procedures.

- A. In order to hear cases brought by the Enforcement Officer under this Chapter, the Board of Supervisors authorizes the use of a Hearing Officer pursuant to Mendocino County Code section 2.76. The Enforcement Officer's department or agency shall coordinate with County Counsel, prior to the issuance of any notice and order to abate, to ensure that a Hearing Officer is appointed for the purpose of presiding at the administrative hearings provided for by this Chapter.

- B. The Hearing Officer shall hold an administrative hearing to determine whether the conditions existing on the property subject to the notice constitute a nuisance under this Chapter, or whether there is any other good cause why those conditions should not be abated. This hearing shall be held no less than five (5) calendar days after service of the notice and order to show cause.
- C. Parties may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- D. The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.
- E. The Enforcement Officer shall first describe the acts or conditions constituting a nuisance. Thereafter, the Owner or Occupant of the property shall be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether the conditions existing on the property constitute a nuisance under this Chapter, or whether there is any other good cause why those conditions should not be abated.
- F. In the event that the Owner or Occupant does not appear and present evidence at the hearing, the Hearing Officer may base their decision solely upon the evidence submitted by the Enforcement Officer. Failure of the Owner or Occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.
- G. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a written decision and order that either affirms, reverses, or modifies the determination contained in the administrative order to show cause issued by the Enforcement Officer, and may include findings relating to the existence or non-existence the alleged nuisance caused by cannabis cultivation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice and order to show cause. If the notice and order to show cause has been combined with the administrative citation and penalties procedures set forth in Mendocino County Code Chapter 1.08, then the decision shall also include the matters set forth in Section 1.08.120. Such decision shall be served on the parties upon whom the notice and order to show cause was

served, and the Enforcement Officer, pursuant to Sections 8.76.070(B) and (C) or in the manner agreed upon by the parties. The decision shall be final when signed by the Hearing Officer and served as provided by this paragraph.

8.76.090. Enforcement.

If the owner or occupant fails to abate any nuisance caused by the cultivation of cannabis within two calendar days of the date of service of the decision of the Hearing Officer under this Chapter requiring such abatement, the Enforcement Officer, his or her Department, or other authorized designee may cause to be done whatever work is necessary to abate the nuisance. If necessary, the Enforcement Officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of inspecting the property to determine if the nuisance remains and also for undertaking the work to abate the nuisance if the nuisance had not already been abated.

8.76.100. Liability for Costs.

- A. In any enforcement action brought pursuant to this Chapter, each person who causes, permits, suffers, or maintains the nuisance caused by the cultivation of cannabis shall be liable for all costs incurred by the County, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this chapter, whether those costs are incurred prior to, during, or following enactment of this chapter.
- B. The costs of abatement incurred as a result of enforcement pursuant to this Chapter may be recovered in accordance with Sections 8.75.150 – 8.75.200.

8.76.110. Administrative Penalties.

- A. The procedures and remedies set forth in Mendocino County Code Chapter 1.08 regarding administrative citations and penalties may be used in combination with the procedures set out in this Chapter.
- B. When the Mendocino County Administrative Citation Ordinance is used in combination with the procedures and remedies set forth in this Chapter, the Mendocino County Administrative Citation Ordinance shall be modified as follows:
 - 1. If a notice of violation is issued by an Enforcement Officer pursuant to Mendocino County Code Section 1.08.070(A), the Enforcement Officer may provide for a time to correct a violation

pertaining to the cultivation of cannabis of less than thirty (30) days, but not less five (5) days;

2. The service procedures set out in this Chapter shall be sufficient to effect service of any required notice pursuant to the Mendocino County Administrative Citation Ordinance;
3. The provisions establishing an appeal of the Administrative Citation in the Mendocino County Administrative Citation Ordinance are no longer optional, but shall be provided as a matter of course and be heard at the same time and location as the hearing regarding the notice and order to show cause provided in this Chapter.
4. Any hearing fee applicable to the Mendocino County Administrative Citation Ordinance as established by resolution of the Board, or any requirement to provide an advance deposit prior to a hearing contesting the Administrative Citation, shall not apply.
5. All other provisions of the Mendocino County Administrative Citation Ordinance shall apply, unless they are in direct conflict with this Chapter, in which case the provisions of this Chapter shall apply.

8.76.120. Severance.

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 10th day of January, 2017, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Gjerde, and Hamburg

NOES: None

ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board



Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel



JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board



Deputy