

ORDINANCE NO. 2004

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TEHAMA
AMENDING CHAPTER 9.06 AND ADDING CHAPTER 10.17 TO THE TEHAMA
COUNTY CODE RELATING TO CODE ENFORCEMENT REMEDIES**

THE BOARD OF SUPERVISORS OF THE COUNTY OF TEHAMA ORDAINS AS
FOLLOWS:

SECTION 1. Section 9.06.075 is hereby added to the Tehama County Code to
read:

9.06.075 Recordation.

- A. Upon issuance of a Notice to Abate Unlawful Marijuana Cultivation or Notice and Administrative Order to Show Cause, the enforcing officer may record with the Tehama County Recorder a notice of pending nuisance abatement proceeding. A notice of pending nuisance abatement proceeding will describe the property and the condition in violation of this chapter.
- B. If a notice of pending nuisance abatement proceeding is recorded, the enforcing officer shall serve and record a notice of final disposition when the nuisance abatement proceeding has been completed, including any hearings or appeals and the completion of any work necessary to abate the nuisance. If the work to abate the nuisance is performed at county expense, or if administrative penalties are imposed under this chapter, the notice of final disposition need not be issued until those costs and penalties have been paid or a lien for those costs and penalties has been recorded. The notice of final disposition shall be served upon any party that was served with the Notice to Abate Unlawful Marijuana Cultivation or Notice and Administrative Order to Show Cause.

SECTION 2. Chapter 10.17 is hereby added to the Tehama County Code to
read:

Chapter 10.17

ENHANCED ADMINISTRATIVE PENALTY COLLECTION PROGRAM

Sections:

- 10.17.010 Authority and Purpose.
- 10.17.020 Compromise of Administrative Penalties.
- 10.17.030 Periodic Payment Plans.

- 10.17.040 Limitations.
- 10.17.050 Severability.

10.17.010 Authority and Purpose. The board of supervisors of the County of Tehama hereby finds and declares the following:

- A. The County of Tehama from time to time imposes administrative civil penalties pursuant to Chapters 9.06 and 10.16 of the Tehama County Code.
- B. Establishment of a program under which the amount of civil penalties imposed in specific cases may be compromised for good cause, and under which periodic payment plans for such penalties may be established, will facilitate overall collection of such penalties, reduce the need to enforce such penalties through the legal action or real property liens, and provide incentives for future compliance.
- C. Such compromised amounts and periodic payments plans, where approved in accordance with the program established herein, thereby serve a public purpose of the County of Tehama.
- D. The enforcement and collection program established hereunder is authorized by Government Code sections 949 and 53069.4, subdivision (a)(1).

10.17.020 Compromise of Administrative Penalties. The Director of Environmental Health may, in his sole and exclusive discretion, compromise the amount of any administrative civil penalty duly proposed or imposed pursuant to Chapter 9.06 or 10.16 of the Tehama County Code, subject to the following conditions:

- A. When determining whether to compromise any penalty amount hereunder, the Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, the financial burden to the person(s) upon whom the penalty has been imposed, the degree to which the proposed compromise will facilitate collection of the penalties without the need for legal action or imposition and foreclosure of property liens, and any other matters justice may require.
- B. Any compromise in excess of fifty percent (50%) of the full amount of the proposed or imposed penalty shall require approval of the Board of Supervisors.

- C. The compromise shall be subject to any terms and conditions prescribed by the Director, which may include, without limitation, a condition requiring that the subject property and all responsible parties remain free of any additional violations for a specified period of time.
- D. Any person accepting a compromised penalty hereunder shall be required to execute a settlement agreement in a form approved by the County Counsel.
- E. If the penalty has been made a lien upon real property in accordance with Tehama County Code section 9.06.165 or 10.16.200, the clerk of the board of supervisors may either record or provide a notice of satisfaction upon payment in full of the compromised amount approved hereunder.
- F. The Director shall make an annual public report to the Board of Supervisors regarding any penalties compromised under this section.

10.17.030 Periodic Payment Plans. The Director of Environmental Health may, with or without compromising the penalty amount, approve the payment of any administrative civil penalty duly proposed or imposed pursuant to Chapter 9.06 or 10.16 of the Tehama County Code through a periodic payment plan. Approval of such payment plans shall be within the sole and exclusive discretion of the Director, and the terms and conditions of such payment plan shall be established by the Director in each case. Any person entering into a periodic payment plan hereunder shall be required to execute a settlement agreement in a form approved by the County Counsel. The Director may record a lien against the real property on which the violation occurred for the full amount due under the periodic payment plan, pursuant to Tehama County Code section 9.06.165 or 10.16.200 as applicable, provided that such lien shall not be enforced through foreclosure and sale of the real property absent a default under the payment plan.

10.17.040 Limitations.

- A. Approval of any compromise and payment plan under this chapter shall be within the sole and exclusive discretion of the Director of Environmental Health, and the Director may refuse a compromise or payment plan even if the criteria set forth in this chapter are satisfied. This chapter does not grant any person the right to have the amount of penalties compromised or deferred under any circumstances or establish any mandatory duty of any nature, and shall not be construed to give rise to any administrative appeal, cause of action, right, or remedy against the County of Tehama or any officer or employee thereof.
- B. A compromise or periodic payment plan approved under this chapter does

not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the compromise or payment plan. The compromise or payment plan does not bar the county from taking any other enforcement action regarding a violation that is not corrected.

10.17.050 Severability. If any section, subsection, sentence, clause, portion, or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The board hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 3. Section 9.06.085 of the Tehama County Code is hereby repealed.

SECTION 4. Section 9.06.085 is hereby added to the Tehama County Code to read:

9.06.085 Alternative Procedure. As an alternative to the procedures set forth in Sections 9.06.050 through 9.06.080, the enforcing officer may issue a Notice and Administrative Order to Show Cause in accordance with this section. The Notice and Administrative Order to Show Cause may be combined with a notice of violation and proposed administrative penalty issued pursuant to Section 9.06.165.

A. The Notice and Order shall:

1. 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.
2. 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.
3. Identify such property by reference to the assessor's parcel number.
4. Contain a statement that unlawful marijuana cultivation exists on the premises and that it has been determined by the enforcing officer to be a public nuisance described in this chapter.
5. Describe the unlawful marijuana cultivation that exists and the actions required to abate it.

6. Contain a statement that the owner or occupant is required to abate the unlawful marijuana cultivation within five (5) calendar days after the date that said notice was served.
 7. 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 Section to determine whether there is any good cause why these conditions should not be abated. The notice shall specify the date, time, and location of this hearing, and shall 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.
 8. 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 will abate the nuisance. It shall also 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.
- B. The Notice and Order shall be served in the manner set forth in Section 9.06.070, provided that any service by mail shall be made by overnight mail or overnight courier service. If the Notice and Order is served by overnight mail or overnight courier service, then the time periods set forth in subdivisions (A)(6) and (D) of this Section shall be extended by one (1) additional day. Copies of the Notice and Order shall also be posted in accordance with subdivision (a)(2) of Section 9.06.070, in addition to any other methods of service set forth in that Section. The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.
- C. In order to hear cases brought by the Enforcing Officer under this Section, the Board of Supervisors hereby establishes for such purpose the Office of County Hearing Officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, to which Office the Board of Supervisors shall appoint one or more hearing examiners. Each such hearing examiner shall be an attorney at law having been admitted to practice before the courts of this state for at least five years. Hearing examiners shall be appointed for a period of not less than one year. In the event that the Board appoints more than one hearing examiner, each day of hearings required under this Section shall be assigned to a hearing examiner based upon an alphabetical rotation. Hearing examiners shall have those powers set forth in sections 27721 and 27722 of the Government Code, including the power to conduct the

hearing, the power to decide the matter under this Section upon which a hearing has been held, the power to make findings of fact and conclusions of law required for the decision, the power to issue subpoenas at the request of a party of interest, the power to receive evidence, the power to administer oaths, the power to rule on questions of law and the admissibility of evidence, the power to continue the hearing from time to time, and the power to prepare a record of the proceedings.

- D. Pursuant to Government Code sections 25845, subdivision (i) and 27721, subdivision (a), 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.
- E. 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 Enforcing Officer. Failure of the owner or occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.
- G. Any hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. 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.
- H. The Hearing Officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the Notice and Order. The Hearing Officer shall issue a written decision, which shall include findings relating to the existence or nonexistence of the alleged unlawful marijuana cultivation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice. If the Notice and Order has been combined with a Notice of Violation and Proposed Administrative Penalty, the decision shall also include the matters set forth in Tehama County Code section 9.06.165, subdivision (h).

Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice was served, and the enforcing officer. The decision shall be final when signed by the Hearing Officer and served as herein provided.

- I. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within two (2) calendar days of the date of service of the decision of the Hearing Officer under this Section requiring such abatement, the enforcing officer may enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary. If any part of the work is to be accomplished by private contract, that contract shall be submitted to and approved by the board of supervisors prior to commencement of work. Nothing herein shall be construed to require that any private contract under this Code be awarded through competitive bidding procedures where such procedures are not required by the general laws of the State of California.
- J. The costs of abatement and administrative costs for every abatement carried out under this Section may be recovered in accordance with Sections 9.06.090 and 9.06.120 through 9.06.160.

SECTION 5. Section 9.06.165 of the Tehama County Code is hereby repealed.

SECTION 6. Section 9.06.165 is hereby added to the Tehama County Code to read:

9.06.165 - Administrative Civil Penalties.

- A. In addition to any other remedy prescribed in this Chapter, any nuisance as described in this Chapter may be subject to an administrative penalty of up to one thousand dollars (\$1,000) per day. The administrative penalty may be imposed via the administrative process set forth in this section, as provided in Government Code Section 53069.4, or may be imposed by the court if the violation requires court enforcement without an administrative process.
- B. Acts, omissions, or conditions in violation of this Chapter that continue, exist, or occur on more than one day constitute separate violations on each day. Violations continuing, existing, or occurring on the service date, the effective date, and each day between the service date and the effective date are separate violations.
- C. In the case of a continuing violation, if the violation does not create an immediate danger to health or safety, the enforcing officer or the court shall

provide for a reasonable period of time, not to exceed five (5) calendar days, for the person responsible for the violation to correct or otherwise remedy the violation prior to the imposition of administrative penalties.

- D. In determining the amount of the administrative penalty, the enforcing officer, or the court if the violation requires court enforcement without an administrative process, shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require.
- E. The enforcing officer may commence the administrative process by issuance of a Notice of Violation and Proposed Administrative Penalty, which shall state the amount of the proposed administrative penalty and the reasons therefore. The Notice of Violation and Proposed Administrative Penalty may be combined with a Notice to Abate Unlawful Marijuana Cultivation issued pursuant to Section 9.06.050 or a Notice and Administrative Order to Show Cause pursuant to Section 9.06.085. The Notice shall be served by certified mail addressed to all of the following: (i) the owner of the property on which the violation exists, at the address shown on the last equalized assessment roll or as otherwise known to the enforcing officer; (ii) anyone known to the enforcing officer to be in possession of the property subject to the Notice, at the street address of the property; and (iii) any other person known to the enforcing officer who has caused, permitted, maintained, conducted, or otherwise suffered or allowed the violation to exist. The failure to serve any person described in this subsection shall not affect the validity of service or the validity of any penalties imposed upon any other person.
- F. Except as provided in subdivision (g), the Notice shall inform the recipient of their right to request a hearing before the Board of Supervisors in accordance with this section. If such a hearing is not requested within ten (10) days after issuance of the Notice, the proposed penalty shall become final and conclusive, and the person to whom the notice was issued shall immediately make payment of the penalty amount to the county. If any person to whom the Notice is issued requests a hearing before the Board of Supervisors, the person shall be notified by first class mail, postage prepaid, when the matter has been set for hearing.
- G. If the Notice of Violation and Proposed Administrative Penalty is combined with a Notice and Administrative Order to Show Cause pursuant to Section 9.06.085, the Notice shall inform the recipient that a hearing will be held before a Hearing Officer appointed in accordance with that Section and specify the date, time, and location of this hearing. Failure of the person or persons to whom the notice was issued to appear and present evidence shall constitute a failure to exhaust administrative remedies.

- H. After the hearing, the Board or Hearing Officer may impose, modify, or disapprove, in whole or in part, by written order, the proposed penalty set forth in the notice. The decision of the Board of Supervisors or Hearing Officer shall be final and conclusive. Any order of the Board of Supervisors or Hearing Officer shall become effective upon issuance thereof and shall be served by first class mail, postage prepaid, upon the appellant. Payment of an administrative penalty specified in said order shall be made to the county within twenty (20) days of service of the order, unless timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b).
- I. Interest shall accrue on all amounts due under this section, from the effective date of the administrative penalty order, as set forth in this section, to the date paid pursuant to the laws applicable to civil money judgments.
- J. In addition to any other legal remedy, whenever the amount of any administrative penalty imposed pursuant to this Section has not been satisfied in full within 90 days and has not been timely appealed to the Superior Court in accordance with Government Code section 53069.4, subdivision (b), or if appealed, such appeal has been dismissed or denied, this obligation may be enforced as a lien against the real property on which the violation occurred.
1. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure section 697.340, and may be extended as provided in Code of Civil Procedure sections 683.110 to 683.220, inclusive.
 2. Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to the law applicable to civil money judgments.
 3. Prior to recording any such lien, the enforcing officer shall prepare and file with the Clerk of the Board of Supervisors a report stating the amounts due and owing.
 4. The Clerk of the Board of Supervisors will fix a time, date, and place for the Board of Supervisors to consider the report and any protests or objections to it.
 5. The Clerk of the Board of Supervisors shall serve the owner of the property with a hearing notice not less than ten (10) days before the hearing date. The notice must set forth the amount of the delinquent administrative penalty that is due. Notice must be delivered by first class mail, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service by mail

is effective on the date of mailing and failure of owner to actually receive notice does not affect its validity.

6. Any person whose real property is subject to a lien pursuant to this Section may file a written protest with the Clerk of the Board of Supervisors and/or may protest orally at the Board of Supervisors meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.
 7. At the conclusion of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the lien amount.
 8. Within 30 days following the Board of Supervisors' adoption of a resolution imposing a lien, the Clerk of the Board of Supervisors will file same as a judgment lien in the Tehama County Recorder's Office.
 9. Once the County receives full payment for outstanding principal, penalties, and costs, the Clerk of the Board of Supervisors will either record a notice of satisfaction or provide the owner with a notice of satisfaction for recordation at the Tehama County Recorder's Office. This notice of satisfaction will cancel the County's lien under this section.
 10. The lien may be foreclosed and the real property sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose. There shall be no right to trial by jury. The County shall be entitled to its attorneys fees and costs.
- K. Administrative penalties imposed pursuant to this section shall also constitute a personal obligation of each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. In the event that administrative penalties are imposed pursuant to this section on two or more persons for the same violation, all such persons shall be jointly and severally liable for the full amount of the penalties imposed. In addition to any other remedy, the county may prosecute a civil action through the office of the county counsel to collect any administrative penalty imposed pursuant to this section.
- L. Payment of administrative penalties under this Section does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Notice of Violation and Proposed Administrative Penalty. The payment of administrative penalties does not bar the County from taking any other enforcement action regarding a violation that is not corrected.

SECTION 7. This ordinance shall take effect thirty (30) days from the date of its adoption, and prior to the expiration of fifteen (15) days from the adoption thereof

shall be published at least one time in the *Red Bluff Daily News*, a newspaper of general circulation in Tehama County.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Tehama, State of California, at a regular meeting of the Board of Supervisors on the 2nd day of June, 2015 by the following vote:

AYES: Supervisors Chamblin, Williams, Garton, Carlson and Bundy

NOES: None

ABSENT OR NOT VOTING: None

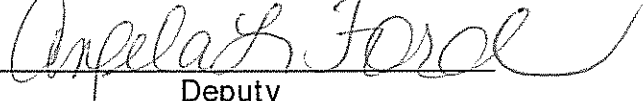

CHAIRMAN, Board of Supervisors

STATE OF CALIFORNIA)
) ss
COUNTY OF TEHAMA)

I, JENNIFER A. VISE, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Tehama, State of California, hereby certify the above and foregoing to be a full, true and correct copy of an ordinance adopted by said Board of Supervisors on the 2nd day of June, 2015.

DATED: This 2nd day of June, 2015.

JENNIFER A. VISE, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Tehama, State of California.

By 
Deputy