



Butte County Measure

Arguments in Support of, or in opposition to, the proposed laws are the opinions of the authors.

H

REFERENDUM ON AMENDMENTS TO THE MEDICAL MARIJUANA CULTIVATION ORDINANCE.

Shall Ordinance No. 4107, an Ordinance of the County of Butte amending Sections 34A-2, 34A-3, 34A-4, 34A-13, 34A-16 and 34A-19 of Chapter 34A of the Butte County Code, entitled "Restriction on Cultivation of Medical Marijuana" be adopted? Yes or No

IMPARTIAL ANALYSIS OF MEASURE H

Measure H is a referendum on Ordinance 4107 adopted by the Butte County Board of Supervisors. A referendum submits a Board-adopted ordinance to a vote of the County's registered voters. On January 26, 2016, the Board of Supervisors adopted Ordinance 4107, amending Chapter 34A of the Butte County Code. A referendum petition to either repeal Ordinance 4107 or submit it to the voters received the required number of signatures. On March 8, 2016, the Board of Supervisors chose to submit the ordinance to the voters. If approved by the voters, Ordinance 4107 would:

1. Confirm that any parcel where marijuana is cultivated must contain a legal residence.
2. Confirm that any parcel .5 of an acre or less is limited to a cultivation area of 50 square feet, which must be contained in a detached structure no larger than 120 square feet.
3. Confirm that an individual living alone on a parcel that is greater than 5 acres may cultivate marijuana, but there must be at least one doctor's recommendation for every 50 square feet of plants.
4. Combine civil penalties for the cultivation of marijuana in violation of Chapter 34A with the nuisance abatement process.
5. Confirm that a penalty of \$500 per day would accrue on the day a 72-Hour Notice to Abate is posted, and would increase to \$1,000 per day if the violation is not timely corrected and the County is forced to set the matter for a Nuisance Abatement Hearing; but if the owner/tenant timely corrects the violation after receiving a 72-Hour Notice to Abate, no hearing would be scheduled and no penalties would be awarded.
6. Require the County to prove that a violation existed at the time a Notice of Hearing is posted, and not at

the time the hearing is held, so that the County could recover its costs and penalties in cases where the owner/tenant failed to timely correct the violation after receiving the 72-Hour Notice to Abate.

7. Allow the County to recover costs and penalties awarded by a hearing officer by placing a lien on the property.
8. Reduce the time for an owner/tenant to abate a violation to ten days from the date the hearing officer's decision is placed in the mail.

A "yes" vote means you support implementing these provisions.

A "no" vote means you do not support implementing these provisions.

If a majority of the votes cast on the measure are "yes", then the measure will be approved and Ordinance 4107 will become effective ten days after the vote is declared by the Board of Supervisors. If a majority of the votes cast on the measure are "no", then the measure will not be approved and Ordinance 4107 will not become effective. This vote on Measure H will not impact ordinances relating to Chapter 34A that were previously passed and adopted by the Board of Supervisors or approved by the voters.

s/Bruce S. Alpert
Butte County Counsel



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COUNTY AUDITOR-CONTROLLER'S FISCAL IMPACT STATEMENT OF MEASURE H

The Butte County Auditor-Controller has prepared the following fiscal impact analysis of Measure "H" (Referendum on Amendments to the Medical Marijuana Cultivation Ordinance) pursuant to Election Code Section 9160. This analysis of the resulting costs and revenues of the proposed measure is based on projected requirements to fulfill the intent of the measure.

Fiscal Impact:

The intent of this Measure is to repeal the amendments to the revised enforcement and hearing process adopted by the Board of Supervisors in January 2016, which was intended to make the County's Code Enforcement process for the abatement of Cultivation of Medical Marijuana Ordinance violations more efficient, resulting in cases arriving at a Hearing Officer more quickly. It also clarified that penalties are recoverable costs for Hearing Officers to apply in their judgements.

Under this Measure, the County would be required to follow the Ordinance in place before the January 2016 amendments which provided that upon confirmation of a violation, a 72 Hour Notice to Abate and Citation up to \$500 per day may be issued. If a violation exists after 72 hours as confirmed in a follow up inspection, the Code Enforcement Officer may issue a new Citation with fines up to \$1,000 per day until the violations are abated and schedule the case for a Nuisance Abatement Hearing. Prior to the Hearing, the Code Enforcement Officer must validate that the violation still exists for the Hearing Officer. This Measure would further allow the County to recover its costs and penalties in cases where the owner/tenant failed to timely correct the violation after receiving the 72-Hour Notice to Abate. It would also allow the County to recover costs and penalties awarded by a Hearing Officer by placing a lien on the property.

County expenditure under the Measure would be the same; however, a streamlined hearing process would likely lead to slightly higher revenues for the County from improvements in cost recovery. The amount of the increase of revenues is difficult to quantify and project, due to the uncertainties that may arise during the hearing process.

ARGUMENT IN FAVOR OF MEASURE H

Smells – Traffic – Nuisance – Crime – All these are associated with Marijuana Cultivation. Vote Yes on H to ensure marijuana cultivation limits are respected and enforced.

Measure H streamlines the enforcement process, stopping violations sooner.

Measure H closes loopholes growers use to skirt the law. Clarified language eliminates "wobble room."

Measure H ends stalling tactics used by growers to complete their pot harvest and evade fines. Many growers only came into "compliance" after being cited, because they harvested before their hearings occurred. With Measure H, violations only have to be proven to exist at the time of citation, not at the time of the hearing.

Measure H ensures more fines are collected. Fines are the best tool to stop non-compliant growers. In 2015, \$2.9M in citations were issued, but only 6% (about \$171,000) were collected due to loopholes, stalling tactics and other dodges. Measure H stops the "free pass."

Measure H doesn't change the growing limits. People can still grow from 50 to 150 square feet of plants for medical use.

In 2014, voters approved Measure A by wide margins. This created reasonable rules limiting the cultivation of Medical Marijuana, adequate for patients but not for commercial profiteers. Measure A was very successful in 2015 by reducing the for-profit grows. However, many growers still flaunt the law and violate the rules. Measure H stops the scofflaws.

In 2015, Code Enforcement eradicated over 34,000 plants and wrote over 894 citations. Illegal activities discovered by Code Enforcement resulted in 11 arrests by law enforcement, helping rid our area of criminals. Three Honey Oil labs were eradicated. Many neighborhoods were restored to their former tranquility.

Measure A cleaned up neighborhoods. Measure H means better enforcement of Measure A.



Butte County Measure

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Vote Yes on H to ensure Marijuana Cultivation limits are obeyed.

s/ Michael L. Ramsey, Butte County District Attorney
s/ Jerry W. Smith, Retired Sheriff
s/ David Daley, Vice President – California Cattlemen’s Association
s/ Sean P. Earley, President, Butte County Cattlemen’s Association
s/ Kory L. Honea, Butte County Sheriff-Coroner

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE H

Vote No on H – defend due process. Defend fair and equitable treatment for Butte County citizens.

Measure H is no knight on a white horse riding in to “stop violations sooner”, “stop the scofflaws”, and “ensure cannabis cultivation limits are obeyed.” It is an incomplete attempt to address a flawed ordinance that has never been properly implemented.

Supporters of a Yes vote criticize the lack of revenue generated while calling cannabis farmers “profiteers” – as though making a living is only okay if it doesn’t come from cannabis.

Revenue-driven enforcement is a slippery slope that sets a dangerous precedent. And if Butte County wants to earn revenue from cannabis farmers, then we should figure out how to regulate it.

Supporters of a yes vote say fines weren’t collected because Code Enforcement didn’t have the tools they needed.

They did. Fines were tossed for improper procedures, lack of training for temporary hires, as the County recently confirmed, and yes, fines were tossed because people were innocent.

Supporters of a yes vote overlook the fact that a more appropriate allocation of resources could increase eradication of dangerous honey oil labs and mitigate the 40 meth labs that led to Oroville’s #2 ranking for methamphetamines.

Conflating cannabis cultivation with these illegal activities is simply a way to characterize our farmers as criminals, and does a disservice to our community.

Don’t be fooled. Pretend this is about your rights, your due process, your presumption of fair and equitable treatment.

Vote for fairness. Vote No on H.

s/Jessica MacKenzie

ARGUMENT AGAINST MEASURE H

Whether you are an advocate, an ally, an adversary or a neutral bystander as it relates to cannabis and its evolving place in our communities and our economy, what we can and should all agree on is that each and every one of us is entitled to fair and equitable treatment by our government and its agencies.

Measure A is a flawed ordinance. It remains flawed, even with the proposed amendments. These amendments were submitted and requested by one of the constituencies affected by Measure A – but only one. Enforcement. And while enforcement, and the agencies that are tasked with it, are entitled to their say in how well something is working and how it might be improved, they are only one voice. One perspective. And no regulation, rule, ordinance, law, or statute should be developed, amended or revoked based only on one perspective.

Enforcement of Measure A has been documented as inconsistent, ineffective, expensive, unevenly applied, and in some cases may even have violated the personal and property rights of your neighbors. It is our firm belief that unless and until the County solicits and considers input from all the stakeholders affected by this Ordinance – farmers, law enforcement, patients, business owners, landlords – and addresses the unequal and inconsistent application and claims of abuse, we should all have to live with the voter-backed version currently in place.

We recommend a No vote and encourage a broader re-evaluation of Measure A.

s/ Jessica MacKenzie



Butte County Measure

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REBUTTAL TO ARGUMENT AGAINST MEASURE H

Don't be fooled by the opponent's dishonest and misleading statements.

The opponent says that the only voice in crafting the Measure H Amendments to our County Marijuana Cultivation Ordinance was Enforcement. This is untrue. The County heard input from growers and those representing family and neighborhood interests. Citizens who filed complaints against non-compliant Marijuana grows expressed dismay that many large commercial marijuana grows continue to use the harvest loophole to avoid paying fines. Marijuana growers expressed their objections as well. All perspectives were considered, not just one.

We do agree that Butte County's Marijuana Cultivation Ordinance needs stronger enforcement teeth. That's why we support Measure H.

The amendments in Measure H will make much-needed improvements to County enforcement of our Marijuana Cultivation Ordinance rules. Measure H will close the enforcement loopholes that are enabling law-breaking marijuana operators to escape punishment. Measure H will ensure that pot growers who violate the law are required to pay fines in a timely manner. It will level the playing field to stop the scofflaws and make sure that all marijuana growers follow the same rules.

The voters of Butte County already approved our County Marijuana Ordinance by a wide margin in November 2014. Voters expect it to be enforced. Measure H will accomplish this.

Vote Yes on Measure H – give law enforcement the tools needed to protect the people of Butte County by properly enforcing our voter-approved Marijuana Cultivation Ordinance.

s/Joan C. Townsend, Retired Medical Clinic Director, Del Norte Clinics

s/Lawrence C. Grundmann, Jr., Retired Entergy Utility Executive

s/Sean P. Earley, President, Butte County Cattlemen's Association

s/David Daley, Vice-President, California Cattlemen's Association

s/Ed McLaughlin, Farmer – Retired Butte County Supervisor

FULL TEXT OF MEASURE H

Ordinance No. _____

AN ORDINANCE OF THE COUNTY OF BUTTE AMENDING SECTIONS 34A-2, 34A-3, 34A-4, 34A-13, 34A-16, AND 34A-19 OF CHAPTER 34A OF THE BUTTE COUNTY CODE ENTITLED "RESTRICTIONS ON CULTIVATION OF MEDICAL MARIJUANA."

Section 1. Section 34A-2 of the Butte County Code is amended by adding the following:

34A-2 Findings and Purpose.

(s) In 2015, the California Legislature enacted Senate Bill 643, along with Assembly Bills 243 and 266, which, among other things, established the Medical Marijuana Regulation and Safety Act (codified as California Business and Professions Code sections 19300 et seq.). Business and Professions Code section 19315(a) provides that "Nothing in this Chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

Section 2. Section 34A-3 is amended only by strikeout and/or underline as follows:

34A-3 Definitions.

(c) "Code Enforcement Officer" means any person employed by the County of Butte and appointed to the position of code enforcement officer, ~~as established by the Butte County's most current Salary Ordinance Number 2652.~~

(n) "Premises" means a single, legal parcel of property that includes an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Sections 34A-6 and 34A-7. Where contiguous legal parcels are under common control or ownership, such contiguous legal parcels shall be counted as a single



Butte County Measure

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~~“premises” for purposes of this Chapter. cultivation will only be permitted on parcels that have an occupied legal residence that is a dwelling in compliance with Chapter 26 of the Butte County Code and has also met the requirements of Section 34A-6 and 34A-7.~~

Section 3. Section 34A-4 is amended only by ~~strikeout~~ and/or underline as follows:

34A-4 Nuisance Declared; Cultivation Restrictions.

(a) The cultivation of marijuana on any parcel that does not satisfy the definition of a premises contained herein is hereby declared to be a public nuisance that may be abated in accordance with this Chapter.

~~(a)~~ (b) The cultivation of marijuana plants exceeding the following square footage limitations, on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter:

(1) If the premises is one-half (0.5) of an acre in size or less, plants may be cultivated ~~on the premises indoors only in a single cultivation area no larger than fifty (50) square feet. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have one (1) or more recommendations associated with the plants. The cultivation area must be located inside~~ a detached structure that is no larger than one hundred twenty (120) square feet in size;

(2) If the premises is greater than one-half (0.5) of an acre in size but less than five (5) acres in size, a single cultivation area no larger than fifty (50) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have one (1) or more recommendations associated with the plants. The cultivation area may be either indoors or outdoors;

(3) If the premises is equal to or greater than five (5) acres in size but less than ten (10) acres in size, a single cultivation area no larger than one hundred (100) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have at least one (1) two (2) or more recommendations ~~associated with~~

~~the~~ for every fifty (50) square feet of plants. The cultivation area may be either indoors or outdoors;

(4) If the premises is equal to or greater than ten (10) acres in size, a single cultivation area no larger than one hundred fifty (150) square feet may be devoted to the cultivation of marijuana on the premises. The cultivation area shall be measured from the outer edge of the marijuana plant canopy and not the stalk. The cultivation area shall have at least one (1) three (3) or more recommendations ~~associated with the~~ for every fifty (50) square feet of plants. The cultivation area may be either indoors or outdoors.

~~(b)~~ (c) The limitations of section 34A-4 ~~(a)~~(b) shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, such limitations shall be imposed notwithstanding any assertion that the persons(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such persons(s) are collectively or cooperatively cultivating marijuana. And further, all persons(s) cultivating marijuana on the premises or participating directly or indirectly in the cultivation must be Butte County residents.

(d) The single cultivation area shall consist of one contiguous space. The length and width of the single cultivation area shall not exceed a ratio of 2:1.

Section 4. Section 34A-13 is amended only by ~~strikeout~~ and/or underline as follows:

34A-13 Abatement procedures.

(a) Whenever a Code Enforcement Officer ~~Director of Development Services, or his or her designee~~ determines that a public nuisance (as defined in this Chapter) exists, he or she ~~or his or her designee, shall request in writing that the public nuisance be abated within seventy two (72) hours.~~ shall post a 72-Hour Notice to Abate on the property where the public nuisance exists, and mail a copy of the same to those persons shown on the latest County tax roll to be the owners of the property. The 72-Hour Notice to Abate shall inform the owner and/or tenants of the basis for the violation, and that an Administrative Penalty of \$500 per day will accrue for each day that the violation continues to exist; explain that if the violation is not corrected, the matter will be



Butte County Measure

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set for a Nuisance Abatement Hearing, at which time the Administrative Penalty will increase to \$1,000 per day; and explain that to prevent the accrual of additional penalties and costs, the owner or tenant must contact the Code Enforcement Office and arrange a time for a Code Enforcement Officer to inspect the property, and confirm that the violation(s) have been corrected.

(b) If the nuisance continues to exist after the expiration of the ~~beyond that~~ seventy-two (72) hour period, the Director of Development Services, or his or her designee a Code Enforcement Officer may set the matter for hearing by issuing a Notice of Nuisance Abatement Hearing. If the matter is set for hearing, the ~~Director of Development Services or his or her designee,~~ Code Enforcement Officer shall post the property upon which the public nuisance exists and shall mail, with a proof of service, notices to those persons known to be in possession of the property, if any, and to persons shown on the latest County tax roll to be the owners of the property at least ten (10) days prior to the hearing; ~~unless thirty (30) days or other notice is required by Health and Safety Code section 17980 or other state law.~~ The Administrative Penalty shall increase to \$1,000 per day from the date the Notice of Nuisance Abatement Hearing is posted on the property, and shall continue to accrue at that rate for each day that the violation continues to exist. Both the mailed and posted notice shall be in substantially the following form:

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property described on the latest equalized Butte County tax roll as A.P. No. _____ and having a street address of _____ is (are) hereby notified to appear before a Hearing Officer of the County of Butte at _____ on _____, 20_____, at the hour of _____ o'clock _____ m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Butte County Code Chapter 34A. The Department of Development Services has determined that conditions exist on the above property which constitute a public nuisance and violate Butte County Code section(s) _____, as follows: _____ . After hearing, if a violation is found to exist, ~~the cost of abating such~~ have existed at the time the Notice of Nuisance Abatement Hearing was posted

on the property, the Administrative Costs incurred in prosecuting the violation, including, but not limited to, the cost of the Hearing Officer, the cost of prior time and expenses associated with bringing the matter to hearing, attorneys' fees, the cost associated with any appeals from the decision of the Hearing Officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, ~~and~~ the cost of securing expert and other witnesses, and the accrual of any Administrative Penalties, may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If an ~~abatement~~ lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that if an initial showing is made by the County, sufficient to persuade the Hearing Officer that a public nuisance existed on your property at the time the Notice of Nuisance Abatement Hearing was posted, you will then have the burden of proving that no public nuisance existed on your property. Therefore, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in this Chapter. A copy of the Butte County Code Chapter 34A relating to Medical Marijuana Cultivation nuisance abatement hearings is enclosed to assist you in the preparation of your presentation.

If an initial showing sufficient to persuade the Hearing Officer that a public nuisance existed on your property is made by the Code Enforcement Officer, your failure to sustain the burden of showing that no public nuisance existed on the property may result in ~~an administrative decision ordering the abatement of uses or conditions on your property which are found to be a public nuisance and may also result in a later judicial order to the same effect.~~ a decision by the Hearing Officer that a public nuisance did exist, and that the County is entitled to recover its Administrative Costs, and all Administrative Penalties that accrued up to the time that the nuisance was abated.



Butte County Measure

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Further, if the Hearing Officer finds that a public nuisance continues to exist on your property, and you fail to abate the nuisance promptly, the County may abate the nuisance. If the County abates the nuisance, in addition to being able to recover its Administrative Costs and Penalties, you may be responsible for the actual costs of the abatement, ~~including the costs to the County of the administrative hearing and attorneys' fees, and such costs.~~ In either circumstance, all Administrative Costs, Abatement Costs, and Administrative Penalties may be specially assessed against your parcel by the Auditor-Controller's Office and added to the your tax bill as a special assessment. Such special assessments have the same priority, for collection purposes, as other county taxes and, if not paid, may result in a forced sale of your property. You are also hereby notified that the County will seek recovery of attorneys' fees incurred in any ~~abatement~~ hearing and that attorneys' fees may be recovered by the prevailing party.

Finally, if the Hearing Officer finds that a public nuisance exists on your property, a violation of the Butte County Code Chapter 34A, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the Hearing Officer's order.

IMPORTANT: READ THIS NOTICE CAREFULLY.

IN ADDITION TO ANY ADMINISTRATIVE CIVIL PENALTIES THAT HAVE ALREADY ACCRUED, AN ADMINISTRATIVE CIVIL PENALTY OF \$1,000 PER DAY IS HEREBY IMPOSED FROM THE DATE THIS NOTICE WAS POSTED ON YOUR PROPERTY, AND WILL CONTINUE TO ACCRUE AT THAT RATE UNTIL THE NUISANCE IS ABATED. IN ORDER TO PREVENT THE ACCRUAL OF ONGOING PENALTIES AND COSTS, YOU MUST CONTACT THE CODE ENFORCEMENT OFFICE, AND ARRANGE A TIME FOR A CODE ENFORCEMENT OFFICER TO INSPECT YOUR PROPERTY, AND CONFIRM THAT THE VIOLATION(S) HAVE BEEN CORRECTED.

FAILURE TO APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND TERMINATION OF USES OF OR CONDITIONS ON YOUR

PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT SERVICES CONTENDS ARE IN VIOLATION OF THE BUTTE COUNTY CODE.

Dated: _____/_____/_____

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

By: _____

Enclosure: Butte County Code Chapter 34A

~~(b)~~ (c) All hearings conducted under this Chapter shall be held before a Hearing Officer designated pursuant to the protocol set forth in that document entitled the "Butte County Administrative Hearing Officer Program." The Program is based upon an alphabetical rotation through attorneys currently under contract through the Program.

~~(e)~~ (d) At the time and place set for the hearing, the Hearing Officer shall ~~review the Director of Development Services' decision ordering cessation of the alleged public nuisance to determine whether such decision conforms to law and is supported by substantial evidence.~~ The Hearing Officer shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Board of Supervisors. The ~~Hearing Officer~~ Director of Development Services, or his or her designee, shall tape record the hearing ~~or engage the services of a certified court reporter to record the hearing and,~~ and provide a copy of the recording to the Hearing Officer following the conclusion of the hearing. The Hearing Officer shall preserve the record of the hearing, and all photographs and demonstrative and documentary evidence introduced at the time of the hearing, for a period of three (3) years.

~~(d)~~ (e) Within five (5) days after the hearing is closed, the Hearing Officer shall render his or her written decision relating to the existence or nonexistence of the alleged public nuisance. If a violation is found to have existed at the time the Notice of Nuisance Abatement Hearing was posted, the decision shall include a statement ~~of the Abatement and Administrative Costs incurred by the County or estimated costs to abate the violation that the County is entitled to recover its Administrative Costs and Administrative Penalties.~~ If the Hearing Officer determines that the violation continues to exist, the decision shall also order that the owner of the property,



Butte County Measure

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or persons known to be in possession of the property, abate the violation within a reasonable time, not to exceed ~~twenty (20)~~ ten (10) days from the date the decision is placed in the mail. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail, return receipt requested, to the person or persons shown on the last County tax roll to be the owners of the property which is the subject of the hearing and the occupant of such parcel, if any. All other persons noticed pursuant to this section shall be mailed a copy of the decision by first class mail, postage prepaid.

~~(e)~~ (f) The decision of the Hearing Officer shall be final and conclusive on the date the certified mail set forth in subsection ~~(d)~~ (e) above, is deposited in the mail.

~~(f)~~(g)(1) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer finds that a violation exists and the public nuisance is not voluntarily abated within ~~twenty (20)~~ ten (10) days of said decision being placed in the mail by the Hearing Officer, the Director of Development Services or his or her designee may abate the public nuisance by cutting and/or removing all marijuana plants from the property, pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above, and Administrative Penalties. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs ~~to perform each abatement for each case~~. Upon completion of the abatement of the nuisance, whether by the Director of Development Services or his or her designee, or the owner or tenant, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs, as well as all Administrative Penalties. The bill shall also state that failure to pay the ~~Abatement and Administrative Costs and Penalties~~ within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.

(2) If the County's ~~Abatement and Administrative Costs and Penalties~~ are not paid within fifteen (15) days from

service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property, and an itemized account of the County's Abatement Costs, Administrative Costs, and Administrative Penalties. ~~The report shall also include the date the abatement was ordered, the work performed, the date the abatement was completed, a description of the property subject to the lien and special assessment, and an itemized account of the County's Abatement and Administrative Costs~~. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

~~(g)~~ (h) At the time and place fixed in the notice, the Board of Supervisors shall hear and consider the proposed lien and special assessment together with objections and protests thereto. At the conclusion of the hearing, the Board of Supervisors may make such modifications and revisions to the proposed lien and special assessment as it deems just and may order that the proposed lien and special assessment be recorded by the Director of Development Services and specially assessed against the property by the Auditor-Controller's Office. The lien shall have the same force, priority and effect as a judgment lien and the special assessment shall have the same priority as other County taxes.

~~(h)~~(i) The notice of ~~abatement~~ lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which the decision of the Hearing Officer was issued, ~~abatement of the nuisance was ordered or deemed ordered by the Board of Supervisors~~, describe the real property subject to the lien, set forth the amount of the ~~Abatement~~ Costs and Penalties



Butte County Measure

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incurred to date and, if applicable, the date upon which the abatement was completed. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

It is the intent of the Board of Supervisors that Abatement Costs, ~~and~~ Administrative Costs, and Administrative Penalties incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all Abatement Costs, ~~and~~ Administrative Costs, and Administrative Penalties have been incurred and the abatement is complete, the Department of Development Services shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

~~(i)~~(j) The decision of the Hearing Officer or Board of Supervisors may be recorded by the Director of Development Services. In the event of such recordation, and in the further event that the violation is corrected and all Costs and Penalties are paid, a notice of such correction shall be recorded. The Director of Development Services is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs, Administrative Costs, and Administrative Penalties as defined in sections 34A-14 and 34A-16 of this Chapter). In any action to foreclose on a lien issued pursuant to this Chapter, the County shall be entitled to an award of attorney's fees. If the property owner has not fully compensated the County for costs incurred during the administrative abatement process, a notice of correction shall not be recorded unless the fee specified in section 41-9 of Chapter 41 has been paid. Payment of the fee specified in section 41-9 of Chapter 41 does not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs and Administrative Costs as defined in section 34A-14 of this chapter).

Section 5. Section 34A-16 is amended only by ~~strikeout~~

and/or underline as follows:

34A-16 Administrative Civil Penalties.

In addition to any other remedies provided by County Code or State Law, there is hereby imposed the following civil penalty for each violation of this Chapter, ~~as imposed by the Code Enforcement Officer:~~

~~(a) Five hundred dollars (\$500.00) per day for the first violation; and one thousand dollars (\$1,000.00) per day for each subsequent violation of this Chapter for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.~~

(a) Five hundred dollars (\$500.00) per day from the day the 72-Hour Notice is posted on the property, and continuing for each day that the violation continues to exist; however, if a Notice of Nuisance Abatement Hearing is issued, the penalty shall increase to one thousand dollars (\$1,000.00) per day from the date the Notice of Nuisance Abatement Hearing is posted on the property, and shall continue to accrue at that rate for each day that the violation continues to exist, until the violation is abated by whatever means.

~~(b) The Code Enforcement Officer shall have the sole and exclusive discretion to impose the civil penalties set forth in this Section. The Code Enforcement Officer shall not impose a penalty set forth in this Section, unless the Code Enforcement Officer's department has established a written policy setting forth how civil penalties are determined. Such policy shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the sophistication of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any, to comply with the applicable ordinances; and any other information which might be relevant to the determination of penalty to be imposed by this Section.~~

(b) At the Nuisance Abatement Hearing, the Hearing Officer shall determine the total amount of Administrative Penalties that have accrued at the time of



Butte County Measure

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the hearing, and that amount shall be reflected in the decision and awarded to the County. If at the time of the hearing the nuisance has yet to be abated, the decision shall state that Administrative Penalties shall continue to accrue at \$1,000 per day until the nuisance is abated. The decision of the Hearing Officer shall be final and conclusive on the date the decision is deposited in the mail.

~~(c) If the penalty is imposed for violation of this Chapter there shall be imposed a fine of two hundred fifty dollars (\$250.00), plus the actual costs of abatement.~~

~~(c) Administrative Penalties The charges imposed by this section shall not apply be awarded if the property owner establishes all of the following: (i) that, at the time he or she acquired the property, a violation of this code already existed on the property; (ii) the property owner did not have actual or constructive notice of the existence of that violation; and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the Code Enforcement Officer, to meet the requirements of this code.~~

~~(d) At the discretion of the Code Enforcement Officer, or his or her designee, or upon the appeal of the property owner, the determination may be referred to a Hearing Officer of the County, duly appointed to hear such matters as described in this Chapter. The determination of the Hearing Officer as to the amount of charges properly imposed under this Section shall be final, subject only to judicial review.~~

~~(d) In the event a tenant or property owner contacts a Code Enforcement Officer and demonstrates that all violations have been corrected in a timely manner prior to a hearing being conducted pursuant to this Chapter, the Director of Development Services, or his or her designee, has the authority to waive or reduce the amount of penalties owed, and cancel the scheduled hearing, if in his or her opinion such a reduction and hearing cancellation is warranted.~~

~~(e) The charges imposed by this Section shall not apply if the property owner establishes all of the following: (i) that, at the time he or she acquired the property, a violation of this code already existed on the property; (ii) the property owner did not have actual or constructive~~

~~notice of the existence of that violation; and (iii) within thirty (30) days after the mailing of notice of the existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely by the Code Enforcement Officer, to meet the requirements of this code.~~

~~(e) Following the issuance of a Hearing Officer's decision, the Director of Development Services, or his or her designee, may compromise the amount of any administrative penalty imposed by the Hearing Officer. When determining whether to compromise any penalty amount, the Director, or his or her designee, shall take into consideration the nature, circumstances, and gravity of the violation(s), any prior history of violations, the degree of culpability, 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 further legal action, and any other matters justice may require. The compromise shall be subject to any terms and conditions prescribed by the Director, or his or her designee, which may include, without limitation, a condition requiring that the subject legal property and all responsible parties remain free of any additional violations for a specified period of time. Any person accepting a compromise penalty hereunder shall be required to execute a Compromise Agreement in a form approved by County Counsel.~~

~~(f) In the event a property owner, in the opinion of the relevant Department Head(s), abates the nuisance in a timely manner after the Notice and Order to Abate has been issued, the relevant Department Head(s) has (have) the authority to waive or reduce the amount of penalties owed, if in his or her opinion such a reduction is warranted.~~

Section 6. Section 34A-16 is amended only by ~~strikeout~~ and/or underline as follows:

34A-16 Use of Money Collected Under This Chapter.

All money collected for penalties for violations of this Chapter and all money collected for recovery of costs of enforcement of this Chapter shall be made available to the Departments, responsible for the enforcement action for training and further code enforcement actions who are involved in the enforcement of this Chapter.



Butte County Measure

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Section 7. The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Section 8. Severability. If any provision of this Chapter or the application thereof to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the Chapter which can be given effect without the invalid provisions or application thereof.

Section 9. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after the date of its passage. The Clerk of the Board of Supervisors is authorized and directed to publish this ordinance before the expiration of fifteen (15) days after its passage. This Ordinance shall be published once, with the names of the members of the Board of Supervisors voting for and against it, in the Chico Enterprise Record, a newspaper of general circulation published in the County of Butte, State of California.

PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the _____ day of _____ 2016, by the following vote:

- AYES:
- NOES:
- ABSENT:
- NOT VOTING:

Bill Connelly, Chair of the Butte County Board of Supervisors

ATTEST:
Paul Hahn,
Chief Administrative Officer and
Clerk of the Board

By: _____
Deputy