

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY**

DEPT: County Counsel

BOARD AGENDA:7.1
AGENDA DATE: November 5, 2019

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance Amending Chapter 6.78 of the County Code Regarding Enforcement Procedures for Unlawful Cannabis Activities Within the Unincorporated Areas of Stanislaus County

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2019-0683

On motion of Supervisor DeMartini , Seconded by Supervisor Berryhill
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Berryhill, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE C.S. 1260

ATTEST:  _____
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No. ORD-56-Q-3

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: County Counsel

BOARD AGENDA:7.1
AGENDA DATE: November 5, 2019

CONSENT

CEO CONCURRENCE:

4/5 Vote Required: No

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance Amending Chapter 6.78 of the County Code Regarding Enforcement Procedures for Unlawful Cannabis Activities Within the Unincorporated Areas of Stanislaus County

STAFF RECOMMENDATION:

1. Introduce and waive the first reading of an ordinance amending chapter 6.78 of the County Code.
2. Find that the adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines section 15061(b)(3). Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it is essentially a textual amendment setting forth the enforcement procedures for enforcement of prohibited activities and does not authorize the construction of any new structures or other physical changes to the environment.

DISCUSSION:

On December 5, 2017, the Board of Supervisors adopted an ordinance relating to the regulation of commercial cannabis activities. Chapter 6.78 Commercial Cannabis Activities was added to the Stanislaus County Code on January 19, 2018. This ordinance regulates the activities of cannabis businesses in the unincorporated area of Stanislaus County.

Enforcement is a critical component to the County Cannabis Program. There is strong evidence that trafficking in illegal non-regulated cannabis has a substantial and detrimental effect on the health and general welfare of the people of the State of California and the people of Stanislaus County. Unlicensed cannabis activities are associated with violent organized criminal activity and are not conducted in accordance with the health and safety standards and testing required by the State of California. The cannabis trafficked illegally is often compromised and adulterated.

Many County residents remain unaware of the differences between licensed and unlicensed cannabis products and retailers. In addition, illegal commercial cannabis activities create unique nuisance impacts to surrounding properties and to the community, including the strong, malodorous, and potentially noxious odors which come

from the plants, potential groundwater and environmental impacts, lowering of property values, and increased criminal activity.

The District Attorney's Office, Environmental Resources – Code Enforcement, Sheriff's Department, along with support from the Chief Executive Office and County Counsel have actively begun to enforce the numerous illegal cannabis operations in Stanislaus County. However, many of the violators are not deterred from continuing the illegal activities as a result of the minimal fines and penalties.

County Counsel, in consultation with the District Attorney, the Sheriff's Department and Code Enforcement has developed the attached ordinance amendments to the County Code to put into place the immediate imposition of daily fines and penalties, and streamlined hearing procedures to deter individuals from conducting illegal cannabis activities in our community.

The proposed ordinance establishes the Office of the County Commercial Cannabis Hearing Officer. The Hearing Officer will be an experienced attorney and will be appointed for a term of one year. The Hearing Officer will hear all administrative proceedings related to permitted and non-permitted illegal cannabis activities. All decisions made by the Hearing Officer are final and may be appealed directly to the Superior Court. Administrative Procedures before the Hearing Officer are streamlined to take approximately 35 days from inspection to issuance of the final administrative decision.

The proposed abatement procedure for unlawful cultivation begins with an inspection. If the illegal activity is verified to be illegal cannabis cultivation the next step is the issuance of a notice of violation and an administrative citation. The administrative citation for illegal cultivation will impose immediate fines of \$1,000 per day, per plant exceeding 6 live plants. Following issuance of the notice of violation the recipient has three calendar days to abate the activity.

Along with service of the notice of violation, staff sets and gives notice of a hearing date before the administrative hearing officer. The hearing may be set as early as 14 days after service of the notice of violation. If not abated within three days, the matter will go to the hearing officer.

The hearing officer may allow one continuance for a maximum of 10 calendar days. Following the hearing the hearing officer is required to issue a written decision within 7 calendar days. Upon service of the written decision, the decision becomes final and may be challenged in superior court. The time to file an appeal may be as short as 20 days based on the circumstances of the particular case.

The administrative fine for illegal cultivation, as stated above, is \$1,000 per day, per plant. The administrative fines for illegal cannabis activities other than cultivation are \$100 for a first violation, \$200 for a second within one year, \$500 for each additional violation within one year of the first. Fines are increased for building, plumbing, electrical, or other similar violations of \$130 for a first violation, \$700 for a second violation one year, \$1,300 for each additional violation within one year of the first violation with a maximum of \$2,500 for additional violations.

If approved, the ordinance amendment will assist staff in the enforcement activities of illegal operations and begin to deter these activities from occurring in our community.

POLICY ISSUE:

Board of Supervisors' approval is required to adopt this ordinance related to the enforcement and regulation of cannabis activities that promote and protect health, safety, and general welfare of persons and property.

FISCAL IMPACT:

Costs associated with the abatement and enforcement of cannabis activities will be offset by fines collected.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Boards' priorities of *Supporting Strong and Safe Neighborhoods and Delivering Efficient Public Services* by safely and effectively administering and regulating cannabis activities in the unincorporated areas of Stanislaus County.

STAFFING IMPACT:

Staffing in the Chief Executive Office, District Attorney's Office, Environmental Resources – Code Enforcement Unit, and the Sheriff's Department have been established to administer the County Cannabis Program and enforce adopted regulations.

CONTACT PERSON:

Thomas E. Boze, County Counsel

Telephone: (209) 525-6376

ATTACHMENT(S):

1. Proposed Ordinance for Amendment of Chapter 6.78 Regarding Enforcement

AN ORDINANCE AMENDING CHAPTER 6.78 "COMMERCIAL CANNABIS ACTIVITIES" MAKING AMENDMENTS TO THE ENFORCEMENT PROCEDURES

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1. Section 6.78.170 of the Stanislaus County Code is amended to read as follows:

"6.78.170 Grounds for Suspension or Revocation or Nonrenewal.

- "A. Commercial Cannabis Activity Permits may be revoked by the County's Chief Executive Officer for any violation of any law and/or any rule, regulation, condition of approval, and/or standard, including those adopted pursuant to this Chapter.
- "B. Any of the following shall be grounds for suspension or revocation of the Commercial Cannabis Activity Permit, based on substantial evidence:
- (1) Failure to comply with one or more of the conditions of the Commercial Cannabis Activity Permit or any County permits or land use conditions of approval, or any permit conditions placed on State permits or licenses;
 - (2) The Commercial Cannabis Activity Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant;
 - (3) Any act or omission by a Property Owner or Permittee that results in the violation of the provisions of this Chapter;
 - (4) Any act or omission by a Property Owner or Permittee that results in the denial, revocation or suspension of the owner's or Permittee's State License;
 - (5) Any act or omission that results in the revocation of a Property Owner or Permittee's commercial cannabis land use permit or development agreement under Title 21 and Title 22 of the Stanislaus County Code;
 - (6) Any act or omission by a Property Owner or Permittee that violates State law or the Stanislaus County Code;
 - (7) A Property Owner's or Permittee's failure to take appropriate action to evict or otherwise remove any Commercial Cannabis Activity Person or Owner who do not maintain the necessary permits or licenses in good standing with the County or State;
 - (8) The Property Owner or Permittee allows any Commercial Cannabis Activity to operate in a manner that constitutes a nuisance, where the Property Owner or Permittee has failed to abate the nuisance after notice; or
 - (9) Suspension of a license or permit issued by the State of California, or by any of its departments or divisions, shall immediately suspend

the ability of a Commercial Cannabis Activity to operate within the County, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the Commercial Cannabis Activity permit, such revocation or termination shall also revoke or terminate the ability of a Commercial Cannabis Activity to operate within Stanislaus County.

- “C. An application for renewal of a Commercial Cannabis Activity permit shall be rejected or denied if any of the following exists:
- (1) The application is filed less than 60 days before its expiration.
 - (2) The Commercial Cannabis Activity permit is suspended or revoked at the time of the application.
 - (3) The Commercial Cannabis Activity has not been in regular and continuous operation in the four months prior to the renewal application.
 - (4) The Commercial Cannabis Activity has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.
 - (5) The Permittee fails or is unable to renew its State of California license.
 - (6) If the County or State has determined, based on substantial evidence, that the Permittee or applicant is in violation of the requirements of this Chapter, of the County Code, or of the State rules and regulations, and the County or State has determined that the violation is grounds for termination or revocation of the Commercial Cannabis Activity Permit.”

Section 2. Section 6.78.180 of the Stanislaus County Code is amended to read as follows:

“6.78.180 Notice of Suspension or Revocation or Non-Renewal of the CCA Permit.

- “A. If the Chief Executive Officer determines that grounds for suspension or revocation or nonrenewal of the Permit exist pursuant to this Chapter, the County Chief Executive Officer shall issue a written Notice of Intention to revoke or suspend or non-renew the CCA Permit, as the case may be. The Notice of Intention shall be served on the Property Owner, as reported on the latest equalized assessment roll, and shall also be served on Permittee at the address reported on the Commercial Cannabis Activity Permits issued pursuant to this Chapter. The Notice of Intention shall be served by either personal delivery or by certified U.S. Mail, postage prepaid, return receipt requested. The Notice of Intention shall describe the property, the intention to revoke or suspend the CCA Permit, the grounds for revocation or suspension, the action necessary to abate the violation, the time limit for compliance, and the right to request a hearing before a Hearing Officer to present evidence as to why the CCA permit should not be suspended or revoked and shall notify them of the ten-day deadline to submit a written request for a hearing.

- "B. The Property Owner and Permittees shall have ten business days from the service of the Notice of Intention to submit a written request for a hearing before the Hearing Officer to the Chief Executive Officer, or designee, who shall immediately forward the request to the hearing officer for a hearing. Failure to submit the written request for a hearing shall be deemed a waiver of the right to challenge the suspension or revocation of the CCA Permit and a failure to exhaust administrative remedies. If the hearing is not timely requested, the County may suspend or revoke the CCA Permit in accordance with the Notice of Intention.
- "C. In the event an action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the Property Owner and Permittee shall be jointly and severally liable to pay the County's total costs of enforcement, including reasonable attorney fees."

Section 3. Section 6.78.183 of the Stanislaus County Code is added to read as follows:

- "6.78.183 Establishment of County Commercial Cannabis Hearing Officer.
- "A. Establishment. The board of supervisors hereby establishes the Office of the Stanislaus County Commercial Cannabis Hearing Officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the California Government Code, to which office the board of supervisors shall by resolution appoint one or more administrative hearing officer(s). Each hearing officer shall be an attorney at law in good standing who has been admitted to practice before the courts of the state of California for at least five years.
 - "B. Appointment, Term, and Compensation of Administrative Hearing Officer(s). Hearing officer(s) shall be independent contractors appointed for a period of not less than one year. The board of supervisors shall approve by resolution policies and procedures relating to the contracting with and compensation of administrative hearing officer(s). The compensation and/or future appointments of an administrative hearing officer shall not be directly or indirectly conditioned upon substance of his/her rulings, including but not limited to the amount of administrative fines levied.
 - "C. Powers of the Administrative Hearing Officer(s). Hearing officer(s) shall have all powers enumerated in Government Code Sections 27721 and 27722 as well as the power to in his or her discretion continue a hearing for no more than ten days upon a showing of good cause by a party of interest, the power to prepare a record of the proceedings, and the power to uphold fines and abatement orders and order that the cost of the abatement be specially assessed against the parcel."

Section 4. Section 6.78.185 of the Stanislaus County Code is added to read as follows:

"6.78.185 Procedures Before the County Commercial Cannabis Hearing Officer.

"A. Hearings.

- (1) Permit Suspension or Revocation or Non-Renewal. Pursuant to Government Code Sections 25845(i) and 27721(A), the hearing officer shall hold a hearing to determine whether grounds for suspension, revocation or nonrenewal of the commercial cannabis activity permit exists. Upon receipt of a timely written request for a hearing, the Hearing Officer shall set a date for a hearing to be held within thirty days of receipt of the request. Notice of the hearing, including the time, date, and location of the hearing, shall be served on the property owner and Permittees. Within thirty calendar days after the close of the hearing, the hearing officer shall issue a written decision, including a statement of the basis for the decision. The hearing officer's written decision shall constitute the final administrative decision of the county.
- (2) Nuisance or Unlawful Commercial Cannabis Activities. Pursuant to Government Code Sections 25845(i) and 27721(A), the hearing officer shall hold an administrative hearing to determine whether the conditions described in the notice of violation, administrative citation and order to abate, and notice of hearing constitute a nuisance under county code or other relevant law, or whether there is any other good cause why the conditions should not be abated. The hearing shall be held no less than fourteen (14) calendar days after service of the notice of violation, administrative citation and order to abate, and notice of hearing. Upon written request by an owner or occupant received by the Chief Executive Officer no less than five days before the scheduled hearing date, the hearing may be continued one time upon a showing of good cause and at the discretion of the hearing officer, for no longer than ten (10) days. Within seven (7) calendar days after the close of the hearing, the hearing officer shall issue a written decision, including a statement of the basis for the decision. The hearing officer's written decision shall constitute the final administrative decision of the county.
- (3) General Rules. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. Witnesses shall be sworn. The hearing officer may question witnesses at any time and recall them as necessary for further testimony. All participants, including parties, counsel, and witnesses, will be expected to maintain a civil demeanor and to present only relevant evidence. The hearing officer is not required to accept into the record any evidence that is irrelevant to the matter before it.

"B. Pre-Hearing Procedures.

- (1) The Chief Executive Officer, or designee, shall post the County's staff report, including relevant evidence to be considered by the hearing officer, on the County's website at least five days before the scheduled hearing date.
- (2) All parties to the hearing shall have the opportunity to testify, introduce exhibits, call and examine witnesses, and cross examine

- opposing witnesses on any matter relevant to the issues.
- (3) In the event that the owner or occupant does not appear and present evidence at the hearing, the hearing officer may base his or her decision solely upon the evidence submitted by the Chief Executive Officer, or designee. Failure of the owner or occupant to appear and present evidence at the hearing shall constitute a failure to exhaust administrative remedies.
 - (4) The hearing officer shall consider the matter de novo, and may affirm, reverse, or modify the determinations made by the Chief Executive Officer, or designee.
- “C. Post-Hearing Procedures. The hearing officer shall issue a written decision, which shall include findings of fact on material issues and the grounds in the record for those findings; any related conclusions of law or policy; any aggravating or mitigating circumstances that are pertinent to the decision; any costs, fines, and penalties and the reasons therefor; and, if requested by the Chief Executive Officer, or designee, an order authorizing the county to abate the nuisance and for the cost of the abatement to be specially assessed against the parcel. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the administrative citation and order was served, and the Chief Executive Officer, or designee. If an owner or occupant was represented by counsel at the hearing, then a copy of the decision shall instead be mailed to or personally served upon his/her counsel in lieu of being delivered or mailed to the owner or occupant. The decision shall constitute the county's final administrative decision when signed by the hearing officer and served as herein provided.
- “D. Appeals of Administrative Hearing Decisions and Orders. All final administrative decisions or orders may be appealed pursuant to Government Code Section 53069.4 or Code of Civil Procedure Section 1094.5.”

Section 5. Section 6.78.190 of the Stanislaus County Code is amended to read as follows:

“6.78.190 Enforcement.

It shall be unlawful for any person to violate any provision, or fail to comply with any of the requirements, of this Chapter. The County, and/or District Attorney, shall have the discretion to enforce the provisions of this Chapter by administrative penalties, civil remedies or by criminal proceedings. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of a misdemeanor. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.”

Section 6. Section 6.78.200 of the Stanislaus County Code is amended to read as follows:

“6.78.200 Limitations on County's Liability.

“A. To the fullest extent permitted by law, Stanislaus County shall not assume

any liability whatsoever with respect to having issued a Commercial Cannabis Activity permit pursuant to this Chapter or otherwise approving the operation of any Commercial Cannabis Activity. As a condition to the approval of any Commercial Cannabis Activity Permit, the applicant shall be required to meet all of the following conditions prior to issuance of the Commercial Cannabis Activity Permit:

- (1) Permittee must execute an agreement, in a form approved by County Counsel, agreeing to fully and completely indemnify, defend (at applicant's sole cost and expense), and hold Stanislaus County, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the County's issuance of the commercial cannabis activity permit, the County's decision to approve the operation of the Commercial Cannabis Activity or activity, to process used by the County in making its decision, or the alleged violation of any federal, state or local laws by the Commercial Cannabis Activity or any of its officers, employees or agents. Permittee's indemnification obligation to the County includes fully reimbursing County for its attorney fees and costs in any case between Permittee and County over Permittee's Commercial Cannabis Activity.
- (2) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by Risk Management.
- (3) Reimburse Stanislaus County for all its costs and expenses, including but not limited to legal fees and costs and court costs, which Stanislaus County may be required to pay as a result of any legal challenge related to the County's approval of the applicant's Commercial Cannabis Activity permit, or related to the County's approval of a Commercial Cannabis Activity including any case between applicant and County that relates in any way to the applicant's Commercial Cannabis Activity. The County of Stanislaus may, at its sole discretion, participate at its own expense in the defense of any such action with the legal counsel of County's own choice, but such participation shall not relieve any of the obligations imposed hereunder."

Section 7. Section 6.78.210 of the Stanislaus County Code is amended to read as follows:

"6.78.210 Promulgation of Regulations.

- A. In addition to any regulations adopted by the County Board of Supervisors, the Chief Executive Officer, or designee, (collectively, "CEO") is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of Commercial Cannabis Activity Permits, the ongoing operation of Commercial Cannabis Activity and the County's oversight, if the CEO determines the rule, regulation or standard to be

necessary to carry out the purposes of this Chapter.

- B. Regulations issued by the CEO shall be published on the County's website.
- C. Regulations promulgated by the CEO shall become effective upon date of publication. Any and all Commercial Cannabis Activity shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the CEO.

Section 8. Section 6.78.250, subparagraph (A) of the Stanislaus County Code is amended to read as follows:

- "A. As a condition of issuance of the CCA Permit, Property Owner and Permittee each authorize and consent to representatives of the County entering the location of the Commercial Cannabis Activity at any time, without notice, to inspect the location of any Commercial Cannabis Activity as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law. The authorization and consent to inspection by the County includes but is not limited to interior areas of any structure on the property subject to the CCA Permit."

Section 9. Section 6.78.260 of the Stanislaus County Code is amended to read as follows:

- "6.78.260 Violations Declared a Public Nuisance, an Immediate Threat to Public Health, Safety and Welfare, and the Imposition of Fines.
- "A. Each and every violation of the provisions of this Chapter is hereby deemed unlawful, a public nuisance, and an immediate threat to public health, safety and welfare. Pursuant to Government Code section 53069.4, subdivision (a)(1)(B), the immediate imposition of fines or penalties pursuant to this Chapter are to protect the public health, safety and welfare against unlawful Commercial Cannabis Activity and other violations herein because they pertain to zoning, health or safety provisions of the County Code.
 - "B. Commercial Cannabis Activities shall be considered unlawful and a nuisance in accordance with Section 2.92 of the County Code, for the purposes of authorizing the disconnection of public utilities from hazardous structures, as described in Section 16.45 of the County Code.
 - "C. Unlawful or Nuisance Commercial Cannabis Activities – Fines. Because each unlawful or nuisance Commercial Cannabis Activity is a violation of the County Code and a public nuisance with unique impacts with a need for urgent abatement, and in order to enforce the County Code to protect the public health, safety and welfare, the purpose and intent of this Chapter is to impose the immediate imposition of daily fines for each and every unlawful or nuisance Commercial Cannabis Activity. Pursuant to Government Code section 53069.4 and other applicable constitutional and statutory authority, the violation of this ordinance shall be an infraction and the following daily fines are imposed upon each and every unlawful or nuisance Commercial Cannabis Activity:

- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.
- (3) A fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

The immediate imposition of daily fines for unlawful or nuisance Commercial Cannabis Activities are necessary because such activity poses unique and immediate risks to public health, safety and welfare. Unlawful or Nuisance Commercial Cannabis Activities is also potentially lucrative enough to incentivize unlawful activity as long as possible. The intent of the Board of Supervisors is to therefore prevent and stop such conduct by adopting daily fines for unlawful or nuisance Commercial Cannabis Activities.

"D. Unlawful or Nuisance Cannabis Cultivation – Fines. Because each unlawful Cannabis Cultivation is a violation of the County Code and a public nuisance with unique impacts with a need for urgent abatement, and in order to enforce the County Code to protect the public health, safety and welfare, the purpose and intent of this Chapter is to impose the immediate imposition of daily fines for each and every unlawful Cannabis Cultivation. Each and every Cannabis plant in excess of 6 Live plants is a separate and distinct violation. Each day is a separate and distinct violation. Pursuant to Government Code section 53069.4 and other applicable constitutional and statutory authority, unlawful Cannabis Cultivation shall be considered a misdemeanor and the following daily fines are imposed upon each and every Cannabis plant in excess of 6 live plants:

- (1) A fine not exceeding one thousand dollars (\$1,000) per plant.

"E. A violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements that exists as a result of, or to facilitate, the illegal Cultivation of cannabis may be subject to an immediate imposition of an administrative penalty which shall be the maximum allowed pursuant to Government Code section 25132 per violation, per day, except as otherwise provided for below.

- (1) Penalty imposition may be delayed and a property owner shall be permitted fifteen (15) days to correct violations of this chapter if all of the following conditions are met:

- a. The property where the cultivation is occurring is being rented or leased and a tenant is in possession.
- b. The property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
- c. The property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information provided the property owner or agent with actual notice of the illegal cannabis cultivation.

e. The immediate imposition of daily fines per Live plant at a Cultivation site for unlawful Cannabis Cultivation is necessary because such activity poses unique and immediate risks to public health and safety and to the natural environment. Unlawful Cannabis

Cultivation is also potentially lucrative enough to incentivize unlawful activity at Cannabis Cultivation sites for as long as possible pending harvest. Illegal cannabis cultivation presents a real and imminent threat to the public health, safety, and welfare. The unregulated cultivation of a large number of cannabis plants on any property substantially increases the risk of violent criminal activity. Crimes such as home invasion robbery, burglary, assault, and homicide occur substantially more frequently on and around properties where cannabis is illegally grown. Cannabis cultivation also creates increased nuisance impacts to neighboring properties because the hazardous wastes and solvents used in illegal cultivation, and strong, malodorous, and potentially noxious odors which come from the plants compromise the health and safety of nearby residents. The intent of the Board of Supervisors is to therefore prevent and stop such conduct by adopting higher daily fines per each Live plant at a Cultivation site that constitutes unlawful Cannabis Cultivation.

"F. Any cannabis cultivation in violation of this chapter is also subject to the California Uniform Controlled Substances Act (Division 10 of the California Health and Safety Code), including the provisions in Chapter 8, (commencing with Section 11469) relating to the seizure, forfeiture, and destruction of property.

"G. Payment of Fine and Penalty.

(1) Any fine and any penalty imposed pursuant to the provisions in this Chapter shall be paid to the county within 30 days from the date of issuance of the administrative citation. Any person who fails to pay to the county any fine or penalty imposed pursuant to the provisions of this chapter on or before the date that the fine is due also shall be liable for the payment of any applicable late payment charge as may be adopted by the Board of Supervisors by resolution.

(2) Any administrative citation fine paid shall be refunded if it is determined by the Administrative Hearing Officer that the person charged in the administrative citation was not responsible for the violation or that there was no violation.

(3) The county may collect any past due administrative citation fine, late payment charge(s), and its collections costs by use of all available legal means. The failure of any person to pay a fine assessed by an administrative citation or a late payment charge or collections costs related to an administrative citation, by the due date shall constitute a debt to the county. The county may seek payment of the debt by use of all available legal means, including but not limited to the following:

(a) The county may refer the debt to the Auditor and controller for collection.

(b) The county may file a civil action to recover the debt.

(c) The county may impose a code enforcement lien upon the real property upon which the violation is located. The lien shall continue until all fines, late payment charges and other costs owed are fully paid. Any lien imposed pursuant to this chapter shall attach upon the recordation of a

notice of code enforcement lien in the Office of the County Recorder.

(d) Recovery through the Franchise Tax Board.

"H. In the event of any conflict between the penalties set forth in this chapter and any penalties set forth in State law, the maximum penalties allowable under State law shall govern."

Section 10. Section 6.78.265 of the Stanislaus County Code is added to read as follows:

"6.78.265 Abatement Procedure for Unlawful or Nuisance Commercial Cannabis Activity and Unlawful Cannabis Cultivation.

"A. In cases involving unlawful or nuisance Commercial Cannabis Activities, as defined in this Chapter, the Chief Executive Officer, or designee, may issue a notice of violation, administrative citation and order to abate, and notice of hearing in accordance with this section. The notice of violation, administrative citation and order to abate, and notice of hearing shall:

- (1) Identify the owner(s) of the property upon which the violation(s) exist, 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 the property by reference to the assessor's parcel number;
- (4) Contain a statement that one or more violations of county code or other applicable law exist relating to the unlawful Cannabis Cultivation Commercial Cannabis Activity on the property and describing the violation(s) that exist and the actions required to abate;
- (5) Contain a statement for unlawful Cannabis Cultivation that there is an immediate imposition of fines in accordance with section 6.78.260(d) and such fines shall be imposed on a daily basis per Live plant until such time as the violation(s) ceases(s). For all other Commercial Cannabis Activities, contain a statement that if not timely abated, fines per violation per day will begin to accrue in accordance with California Government Code section 25132, subdivisions (a) and (b) and 6.78.260 subdivision (c);
- (6) Contain a statement that the owner(s) or occupant(s) is required to abate the stated violation(s) within three (3) calendar days after the date that said notice of violation, administrative citation, imposition of fine(s), and order to abate, and notice of hearing was served as provided in this section;
- (7) Notify the recipient(s) that, unless the owner(s) or occupant(s) abates the violation(s) and provides proof of abatement satisfactory to the Chief Executive Officer, or designee, a hearing will be scheduled and held before a hearing officer appointed in accordance with this Chapter to determine whether there is any reason why the violation(s) should not be abated. The notice of violation,

administrative citation, imposition of fine(s), and order to abate, and notice of hearing shall specify the date, time, and location of this hearing, and state that the owner(s) or occupant(s) will be given an opportunity at the hearing to present and elicit testimony and/or other evidence regarding whether the conditions existing on the property constitute a violation of the County Code, or whether there is any other good cause why those conditions should not be abated;

(8) Contain a statement that, unless the owner(s) or occupant(s) abates the violation(s), or shows good cause before the administrative hearing officer why the conditions should not be abated, the Chief Executive Officer, or designee, will abate the nuisance. It shall also state that the costs of abatement, including administrative costs, may be made a special assessment added to the county assessment roll and become a lien on the real property.

"B. The notice of violation, administrative citation and order to abate, imposition of fine(s), and notice of hearing shall be: (1) personally served, or served by overnight mail or overnight courier service on the property owner(s) and occupant(s) (if different); and (2) posted in two conspicuous locations on the subject property. The failure of any owner(s) or occupant(s) to allow the posting of notice or to receive a notice of violation, administrative citation and order to abate, and notice of hearing served in accordance with this section shall not affect the validity of the proceedings under this section.

"C. The hearing procedure shall be conducted according to Section 6.78.185.

"D. Appeals of Administrative Hearing Decisions and Orders. All final administrative decisions or orders may be appealed pursuant to Government Code Section 53069.4 or Code of Civil Procedure Section 1094.5 as applicable."

Section 11. Section 6.78.260 of the Stanislaus County Code is amended to read as follows:

"6.78.270 Each Violation a Separate Offense.

"Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by Stanislaus County Code. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any permit issued pursuant to this Chapter being deemed null and void, disgorgement and payment to the County by Permittee of any monies unlawfully obtained, payment by the Permittee of the County's costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. Stanislaus County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the Commercial Cannabis Activity or persons related to, or associated with, the Commercial Cannabis Activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the County may take immediate action to temporarily suspend a Commercial Cannabis Activity Permit issued by the County or abate an unlawful Cannabis Cultivation, pending a hearing. The determination of an immediate

threat to public health, safety or welfare may be made by any County law enforcement officer or any County employee authorized by the County to make an inspection of the Commercial Cannabis Activity or unlawful Cannabis Cultivation. Any delay by the County law enforcement officer or County employee to take immediate action to temporarily suspend any Commercial Cannabis Activity or unlawful Cannabis Cultivation shall not be deemed to constitute or imply that there was no immediate threat to public health safety or welfare.”

Section 12. This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____, seconded by Supervisor _____, the foregoing resolution was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, the _____ day of _____, 2019, by the following called vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

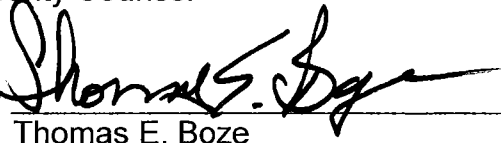
Terrance Withrow, Chair of the Board of Supervisors of the County of Stanislaus, State of California

ATTEST:
Elizabeth King
Clerk of the Board of Supervisors of the County of Stanislaus, State of California

By _____
Deputy

APPROVED AS TO FORM:

Thomas Boze
County Counsel

By 
Thomas E. Boze

STANISLAUS COUNTY
ORDINANCE C.S. 1260

NOTICE IS HEREBY GIVEN that on November 19, 2019, at 6:30 p.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1260 amending Chapter 6.78 of the Stanislaus County Code relating to the enforcement procedures of Commercial Cannabis Activities.


NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Thomas E. Boze, County Counsel, at (209) 525-6376, bozet@stancounty.com or at 1010 10th Street, Suite 6400, Modesto, CA.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: November 5, 2019

ATTEST: ELIZABETH A. KING, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY:



Pam Villarreal, Assistant Clerk

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of THE MODESTO BEE, printed in the City of MODESTO, County of STANISLAUS, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, Under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Nov 14, 2019

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

November 14th, 2019

(By Electronic Facsimile Signature)



STANISLAUS COUNTY
ORDINANCE C.S. 1260
NOTICE IS HEREBY GIVEN that on November 19, 2019, at 6:30 p.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1260 amending Chapter 6.78 of the Stanislaus County Code relating to the enforcement procedures of Commercial Cannabis Activities.
NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Thomas E. Boze, County Counsel, at (209) 525-6376, bozet@stancounty.com or at 1010 10th Street, Suite 6400, Modesto, CA.
BY ORDER OF THE BOARD OF SUPERVISORS. DATED: November 5, 2019. ATTEST: ELIZABETH A. KING, Clerk of the Board of Supervisors of the County of Stanislaus, State of California
BY: Pam Villarreal, Assistant Clerk.
Pub Dates Nov 14, 2019

ORDINANCE AMENDMENTS TO CHAPTER 6.78 REGARDING ENFORCMENT OF ILLEGAL CANNABIS ACTIVITIES

Cannabis Enforcement

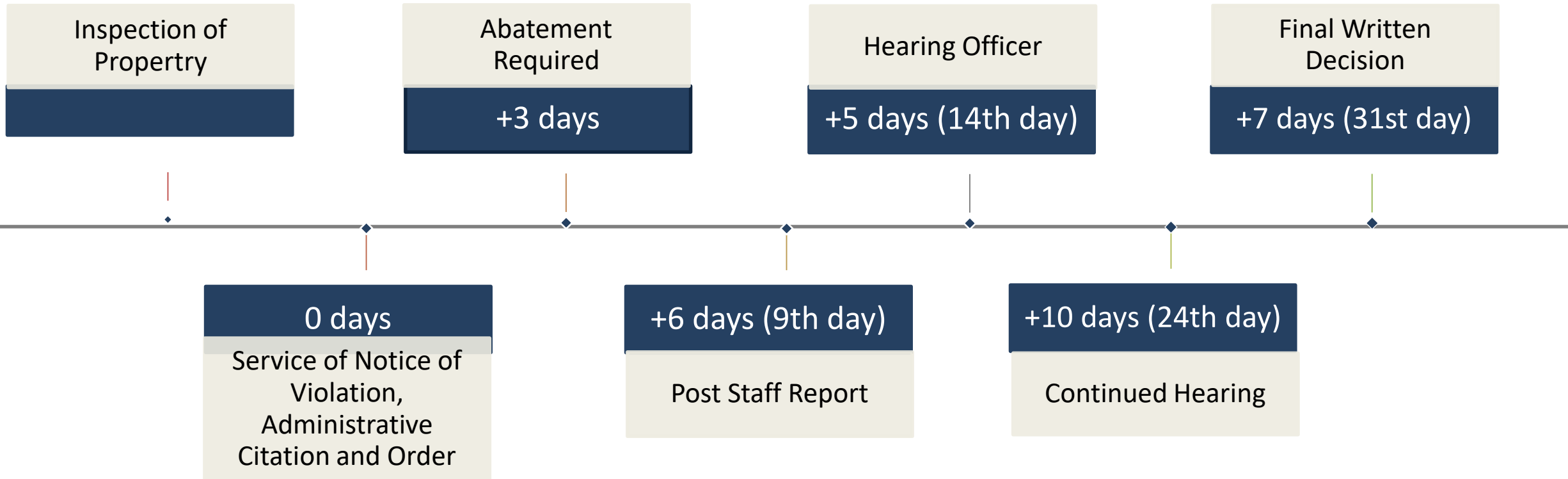
- Current Cannabis Ordinance adopted on January 9, 2019
- Critical component of the County Cannabis Program
- Unlicensed Cannabis Activities
 - Nuisance Impacts
- Active Enforcement County-wide
- Need for more deterrence
 - Fines & Penalties
 - Streamlined process

Enforcement Amendments

- Current Cannabis Ordinance utilizes normal nuisance enforcement procedure in Chapter 2.92:
 - Notice and order to abate and administrative citations fines not to exceed the penalty for infractions of \$100/\$200/\$500 per violation
 - Hearing before the Nuisance Abatement Hearing Board
 - Order to Abate Approved by the Board of Supervisors
 - Abatement (costs and fines recovered as a lien)

Enforcement Amendments

Cultivation Abatement Process



Enforcement Amendments

Fines and Penalties

ACTIVITY	ADMINISTRATIVE FINE
Distribution, Sale, Manufacture, etc.	\$100 for a first violation, \$200 for a second within one year, \$500 for each additional violation within one year of the first.
Cultivation	\$1,000 for each day for each plant exceeding 6 live plants.
Building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements that facilitate the illegal Cultivation of cannabis	\$130 for a first violation, \$700 for a second violation one year, \$1,300 for each additional violation within one year of the first violation. \$2,500 for each additional violation of the same ordinance within two years of the first violation.

Enforcement Amendments

- Commercial Cannabis Hearing Officer
 - An experienced attorney;
 - Paid one year term;
 - Authorized to conduct the hearing; issue subpoenas; receive evidence; administer oaths; etc., to decide matters before the hearing officer;
 - Required to render a written decision and conclusions within 7 days of the hearing.

Questions