



..Title
..Body

MEMORANDUM

TO: Board of Supervisors

FROM: Robert Massarelli, Community Development Director 
Kathy Freeman, Code Enforcement Program Supervisor 

BY: Jeri Driver, Code Enforcement Technician

DATE: October 24, 2017

SUBJECT:

- 1.) Uphold the Notice and Order to Abate Unlawful Marijuana Cultivation dated September 26, 2017.
- 2.) Authorize staff to move forward with the abatement process by removal and disposal of the unlawful marijuana located on the aforementioned property.

Attachments:

1. Notice of Nuisance and Order to Abate
2. Nuisance Abatement Hearing Request Form

EXECUTIVE SUMMARY:

On September 26, 2017 Lake County, the Code Enforcement investigated a complaint for a possible unlawful marijuana grow site located at 2705 Hartley Rd, Lakeport, CA. The Code Enforcement officer arrived at the subject property and could see marijuana growing over the top of a fence on the property. A Notice and Order to Abate Unlawful Marijuana Cultivation; **see Attachment 1** was completed and posted on the property on September 26, 2017.

The posted Notice provided the property owner and/or tenant to abate the unlawful marijuana or request a Public Hearing within 5 business days from the posting of the Notice, as prescribed by the County of Lake Zoning Ordinance, Chapter 21, Article 72. On September 29, 2017 a Marijuana Nuisance Abatement Hearing Request Form; **see Attachment 2** was received by staff from the property owner's attorney, which was done in a timely manner. The Request Form specified two (2) reasons why it is believed that the property is not in violation: 1) the property owner is not aware of any cultivation at this property that violates Section 21-72 of the Lake County Municipal Code and 2) Specifically, there is no violation of section 72.5(b).

This property located at 2705 Hartley Rd, Lakeport is 1.45 acres and zoned SR, Suburban Reserve District with a primary residence. The Lake County Zoning Ordinance; Chapter 21, Article 72.5 (b) specifies: *Outdoor cultivation, including cultivation within greenhouses or “hoophouses” is prohibited on any parcel that is located **within a Community Growth Boundary** as designated by the Lake County General Plan, and on any parcel that is one (1) acre or smaller and located outside of any designated Community Growth Boundary.* This property is located within the Community Growth Boundary of north Lakeport. Therefor outdoor cultivation is prohibited.

FISCAL IMPACT: X None Budgeted Non-Budgeted
 Estimated Cost: N/A
 Amount Budgeted: N/A
 Additional Request: N/A
 Annual Cost (if planned for future years): N/A

FISCAL IMPACT (Narrative): N/A

STAFFING IMPACT: N/A

..Recommended Action
RECOMMENDATION:

- 3.) Uphold the Notice and Order to Abate Unlawful Marijuana Cultivation dated September 26, 2017.
- 4.) Authorize staff to move forward with the abatement process by removal and disposal of the unlawful marijuana located on the aforementioned property.

NOTICE AND ORDER TO ABATE UNLAWFUL MARIJUANA CULTIVATION

PURSUANT TO LAKE COUNTY CODE, CHAPTER 21, Article 72 ET. SEQ.

- A. CASE NUMBER: 17-00510 ASSESSORS PARCEL NUMBER: 005-039-08
OWNER(S) NAME: WHITE, PENNIE RENE
SITE ADDRESS: 2705 HARTLEY LAKEPORT
MAILING ADDRESS: PO BOX 1525 LAKEPORT CA 95453
- B. CONDITION CAUSING NUISANCE: Cultivation of marijuana in violation of Section 21-72.5 of the Lake County Code. Specifically, you are in violation of the following provision(s) of the Regulations for the Cultivation of Medical Marijuana:
- ☐ Cultivation of marijuana on vacant land is prohibited. Must contain permitted, habitable residence.
 - ☒ Outdoor cultivation on parcel of 1-acre or smaller and/or located within Community Growth Boundary prohibited.
 - ☐ Outdoor cultivation of more than 6 mature or 12 immature marijuana plants on a parcel larger than 1 acre prohibited.
 - ☐ Outdoor cultivation of more than 48 mature or 72 immature marijuana plants on a parcel of 20 or more acres, zoned "A", by a collective or cooperative is prohibited.
 - ☐ Outdoor cultivation within 1,000 feet of a public or private school, public park with playground equipment, drug or alcohol rehabilitation facility, child care facility or nursery school, church or youth-oriented facility.
 - ☐ Outdoor cultivation of marijuana located within 100 feet of any spring, top of bank of any creek or seasonal stream, edge of lake, delineated wetland or vernal pool.
 - ☐ Outdoor cultivation within 75 feet of any property line or within 150 feet of any off-site residence, as measured from the edge of the fence of the cultivation area is prohibited.
 - ☐ Outdoor cultivation must be screened from public view and views of adjacent parcels with a fully enclosed solid fence of a minimum of six (6) but not more than eight (8) feet in height, with locked gates.
 - ☐ Indoor cultivation in excess of 100 square feet.
 - ☐ Tenants and lessees must have property owner's written approval with notarized signature in order to cultivate.
- On 9/26/17 your property was found by Enforcement Officials to contain 64 marijuana plants. This constitutes a public nuisance in accordance with Chapter 21, Article 72, Section 72.7 of the Lake County Code.
- C. ORDER IS GIVEN TO COMPLETE ABATEMENT OF SAID NUISANCE WITHIN 5 BUSINESS DAYS (10/3/17) AND CORRECT THE NUISANCE CONDITIONS DESCRIBED ABOVE BY REMOVING PROHIBITED MARIJUANA PLANTS. A MAXIMUM OF _____ PLANTS ARE ALLOWED.

N. Penhall #10125
LAKE COUNTY SHERIFF'S OFFICE CODE 217
STATE OF CALIFORNIA, COUNTY OF LAKE

DATED: 9/26/17

SEE REVERSE SIDE

White: Office Yellow: Owner Pink: Posted

ATTACHMENT 1

Pg 1 of 2

- D. AS TO ANY EXISTING MEDICAL MARIJUANA CULTIVATION SITES LOCATED WITHIN THE UNINCORPORATED AREA OF THE COUNTY OF LAKE WHICH ARE OPERATING CONTRARY TO OR IN EXCESS OF THE ABOVE LIMITS, THEY ARE HEREBY DECLARED TO BE UNLAWFUL AND A PUBLIC NUISANCE PURSUANT TO CHAPTER 21, ARTICLE 72, SECTION 72.7 OF THE LAKE COUNTY CODE, AND A VIOLATION OF THE REGULATIONS FOR THE CULTIVATION OF MEDICAL MARIJUANA IS DECLARED.
- E. YOU ARE HEREBY NOTIFIED THAT IF YOU WISH TO SHOW ANY CAUSE WHY MARIJUANA BEING CULTIVATED IS NOT A VIOLATION OF CHAPTER 21, ARTICLE 72 OF THE LAKE COUNTY CODE AND THEREFORE SHOULD NOT BE ABATED AS A PUBLIC NUISANCE BY THE ENFORCEMENT OFFICIAL, YOU MUST REQUEST A PUBLIC HEARING BEFORE THE LAKE COUNTY BOARD OF SUPERVISORS PURSUANT TO SECTION 72.9(d) OF SAID LAKE COUNTY CODE BY COMPLETING A MARIJUANA NUISANCE ABATEMENT HEARING REQUEST FORM. SAID FORM IS AVAILABLE AT THE COMMUNITY DEVELOPMENT DEPARTMENT (LOCATED AT 255 N. FORBES STREET, LAKEPORT) AND MUST BE FILED WITHIN 5 BUSINESS DAYS OF SERVICE OF THE NOTICE AND ORDER TO ABATE UNLAWFUL MARIJUANA CULTIVATION. IF YOU FAIL TO REQUEST A HEARING, ALL RIGHTS TO APPEAL ANY ACTION OF THE COUNTY TO ABATE THE NUISANCE WILL BE WAIVED.
- F. IF YOU FAIL TO CORRECT THE NUISANCE CONDITIONS BY THE DATE SPECIFIED IN SECTION C OF THIS NOTICE AND ORDER OR ANY SUBSEQUENT TIME EXTENSION GRANTED BY THE ENFORCEMENT OFFICIAL, AND/OR FAIL TO SUCCESSFULLY SHOW CAUSE WHY SUCH CONDITION SHOULD NOT BE ABATED AS SPECIFIED IN SECTION E OF THIS NOTICE, THE ENFORCEMENT OFFICIAL MAY ABATE THE PUBLIC NUISANCE. THE COSTS OF SUCH ABATEMENT ACTION MAY BE MADE A SPECIAL ASSESSMENT AGAINST THE PREMISE; MAY BE PAID THROUGH A CODE ENFORCEMENT DEBT REDUCTION AGREEMENT; OR ALTERNATIVELY MAY BE REFERRED TO A DEBT COLLECTION AGENCY.

Lake County Code, Chapter 21:

72.7 Nuisance Declared; Misdemeanor Violation; Enforcement Authority

- (a) The cultivation of marijuana plants in excess of the amounts specified by this Article for individuals and collective or cooperative organizations, either indoors, outdoors, or combination thereof on any premises is hereby declared to be unlawful. Any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law. Any person who violates a provision of this Article is subject to criminal sanctions, civil actions, and administrative penalties.
- (b) Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns or is a tenant upon the property upon which medical marijuana is cultivated, except as provided for in Sections 72.5 and 72.6, or owns the medical marijuana that is cultivated at the premises or otherwise violates any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.
- (c) If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed One thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding six months or by both such fine and imprisonment. If charged as an infraction, the violation shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$200.00) for the second violation within one year, and Five Hundred Dollars (\$500.00) for each additional violation within one year. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.
- (d) All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the county from the pursuit of any other remedy for the purpose of abating or otherwise regulating or preventing public nuisances.
- (e) Primary responsibility for enforcement of this ordinance shall vest with the Sheriff of the County of Lake and his sworn officers. All other county officials with authority to enforce the County Code shall also have the authority to enforce this ordinance.
- (f) Nothing herein shall confer on any person the right to maintain a public or private nuisance. Except for actions arising out of this chapter, no provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person.

72.9 Abatement procedures. Notwithstanding section 72.9(a) of this Article, whenever an Enforcement Official determines that a violation of this Chapter exists that results in a public nuisance, he or she shall direct in writing that the public nuisance be abated within five (5) business days. If the condition(s) continue beyond five (5) business days and are not abated by the property owner or tenant, the Enforcement Official shall be authorized to abate the nuisance.

(a) **Notice and Order to Abate Unlawful Marijuana Cultivation.** Whenever an enforcement official determines that a public nuisance as described in this Article exists on any property within the unincorporated area of Lake County he or she is authorized to notify the owner and/or occupant(s) of the premises through issuance of a "Notice and Order to Abate Unlawful Marijuana Cultivation".

72.10 Enforcement.

(a) Whenever the Enforcement Official becomes aware that an owner or occupant has failed to abate any unlawful marijuana cultivation within five (5) business days of the date of service of the Notice to Abate Unlawful Marijuana Cultivation, unless timely appealed, or of the date of the decision of the Board of Supervisors requiring such abatement, the Enforcement Official may take one or more of the following actions:

1. Enter upon the property and abate the nuisance by County, State or Federal personnel. The Enforcement Official may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary.
2. Request that the County Counsel commence a civil action to redress, enjoin, and abate the public nuisance.



COUNTY OF LAKE
COMMUNITY DEVELOPMENT DEPARTMENT
CQ1..n1;house 266 N. Forbes Street
Lakeport, California 95453
Telephone 707/263-2382 FAX 707/263-2225

RECEIVED

SEP 29 2017

LAKE COUNTY COMMUNITY
DEVELOPMENT DEPT.

**NUISANCE ABATEMENT HEARING REQUEST FORM
TO BOARD OF SUPERVISORS**

Pursuant to Section 13-7 of the Lake County Code

Date Request for Hearing Form Submitted: September 29, 2017

Site Address: 2705 Hartley Road, Lakeport, CA 95453

Assessor's Parcel Number: 005-039-08

Property Owner's Name: Penni Rene White

Mailing Address: PO Box 1525 Lakeport, CA 95453

Phone#: (707) 533-6911

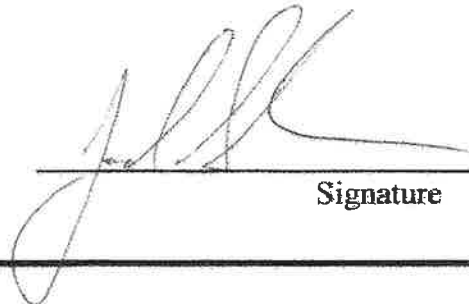
Tenant's or Representative's Name (if applicable) Jared Schwass

Mailing Address: 4040 Civic Center Dr., Suite 219, San Rafael, CA 94903;

Phone #: (415) 441-1776

Reason(s) why the property should not be considered a public nuisance: (Attach extra sheets if necessary)

The Property owner is not aware of any cultivation at this property that violates Section 21-72 of Lake County's Municipal Code. Specifically, there is no violation of section 72.5(b).


Signature

FOR OFFICE USE ONLY

Case Number: _____

Date Received: _____

Received By: _____

ATTACHMENT 2