

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SPECIFIED SECTIONS OF CHAPTER 13 OF THE LAKE COUNTY CODE RELATING TO ADMINISTRATIVE FINES FOR VIOLATIONS OF LAKE COUNTY CODE RELATING TO THE FAILURE TO OBTAIN CANNABIS CULTIVATION PERMITS

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

**Section One:** Section 13-52.2 of Chapter 13 of the Lake County Code is hereby amended to read as follows:

**“52.2 Administrative Fines for Failure to Obtain and/or Maintain Any Permit Related to Cannabis Operations Which is Required, Issued, and/or Approved by the County.**

Certain misconduct poses such critical risk to the health, safety, and welfare of the County’s residents. The jeopardy to the environment is significant and prolonged when cannabis cultivation operations occur without proper licensure and permitting, creating devastating water pollution, dangerous erosion, and leaching of chemicals and toxins into the County’s water supply. A civil penalty in the form of a fine must be imposed.

Further, the failure to obtain the necessary permits to engage in cannabis cultivation legally in Lake County is a fraud against the County, depriving the County of the taxes to which it is lawfully due, and constitutes an unfair business practice which puts those engaged in permitted cannabis cultivation operations at a distinct and significant disadvantage. Said violations are not designated as infractions and any fine imposed as a consequence of such violation is not a tax or a fee under Article XIII C, Section One, subdivision (e)(5) of the California Constitution and is subject only to the Excessive Fines Clause of Article 1, Section 17 of the California Constitution and the Eighth Amendment of the United States Constitution.

While the failure to obtain a permit required for cannabis cultivation operations shall constitute a public nuisance, the procedures established in this Section are in addition to any other procedures or legal remedies used to address violation of County ordinances, including but not limited to, nuisance abatement procedures. The Administrative Fine imposed pursuant to this Section may be charged consequent to a nuisance abatement process or may occur as a separate billing apart from the nuisance abatement process.

a. **Administrative Fine Imposed.**

In determining the amount of any administrative fine, the enforcement official shall take into consideration the circumstances of the violation, the degree of harm caused by the violation, any prior history of violations, the responsible parties' ability to pay the fine, the market value of the cannabis cultivation in violation of this Section and any other factors in the furtherance of justice.

b. **Amount of Administrative Fine Imposed.**

The Administrative Fine imposed by this Section is so imposed as a separate violation for each day the violation continues to persist beginning at the time a notice of violation is served upon the responsible party or parties. The Administrative Fine shall continue to accrue until the violation is remedied. For purposes of this Section, the violation of conducting cannabis cultivation operations in the unincorporated areas of the County without the required County permit(s) may only be remedied by the responsible party or parties either by self-abatement of all such unpermitted operations or by the application by the responsible party or parties for the required County permit(s) within the 30 day-period described hereinbelow. Those fines described in subsections b. (1) through (3)

hereinbelow will not become a debt owed to the County if the violations giving rise to said fines are corrected within 30 days.

(1) Any person engaged in cannabis cultivation operations in the unincorporated area of the County for which a County permit(s) is required who engages in said operations without having first obtained the required County permit(s) is in violation of this prohibition and, if the violation is not corrected within 30 days, shall be liable for an administrative fine of up to \$1000 per day per violation.

(2) For a second such violation within a twelve-month period commencing from date of issuance of the prior administrative citation to the same person, or on the same premises if the property owner remains the same, the administrative fine shall be \$3,000 per day per violation.

(3) For a third such violation within a twelve-month period commencing from date of issuance of the prior administrative citation to the same person, or on the same premises if the property owner remains the same, the administrative fine shall be \$5,000 per day per violation.

requirements, and conditions determined necessary under the law then existing.

c. **Per Cannabis Plant Penalty.** For any cannabis cultivation operations for which a County permit is required, there shall be an additional penalty imposed for every cannabis plant cultivated in violation of this ordinance. Said penalty constitutes a debt against the County from the date of the notice of violation and is due and payable immediately upon the date of the notice of violation and continues until the violation is corrected. Said per cannabis plant penalty is as follows:

1-50 plants - a per plant per day penalty of up to \$50.00 per plant

50-100 plants - a per plant per day penalty of up to \$250 per plant

101 or more plants - a per plant per day penalty of up to \$500 per plant.

d. **Definitions.**

(1) *Responsible Party* means i) each person committing the violation or causing a condition on a parcel of real property located within the jurisdiction of the County of Lake which gives rise to the violation; ii) each person who has an ownership interest in that property; or iii) each person who, although not an owner, nevertheless has a legal right or a legal obligation to exercise possession and control over that property.

(2) *Cannabis Operations* means any business activity involving cannabis other than personal use, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

(3) *Person* means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

e. **Additional Penalties and Remedies.**

Any person owing fines and/or penalties pursuant to this Section shall be liable in an action brought in the name of the county for recovery of such fines and/or penalties.

These recovery costs may include reasonable attorney fees incurred in the action if the county prevails, as the county reserves the right to seek to recover reasonable attorney

fees, on a case by case basis, pursuant to California Government Code Section 25845, subdivision (c). In those cases in which the County seeks to recover reasonable attorney fees, the other party may likewise do so. All such costs recovered by the County pursuant to this chapter shall be placed in the Code Enforcement Fund described in Section 13-48.2 of the Lake County Code.

Additionally, the District Attorney, or the County Counsel with agreement of the District Attorney, may bring a civil action pursuant to California Business and Professions Code section 17206 to enforce this Section.

**Section Two:** CEQA Review. This Board finds that the monetary amounts imposed by this ordinance are fines/penalties and are therefore exempt from the provisions of the California Environmental Quality Act ("CEQA").

**Section Three:** This Board finds that the fines and penalties authorized by this Ordinance are not taxes and are exempt from the provisions of Article XIIC of the California Constitution pursuant to Section 1 of Article XIII C, subdivision (e)(5).

**Section Four:** All ordinances or parts of ordinances in conflict herewith are hereby

**Section Five:** This ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_, 2019 and before the expiration of fifteen days after its passage, it shall be published at least once in a newspaper of general circulation printed and published in the County of Lake.

The Foregoing Ordinance was introduced before the Board of Supervisors on the \_\_\_\_ day of \_\_\_\_, 2019, and passed by the following vote on the \_\_\_\_ day of \_\_\_\_, 2019.

AYES:

NOES:

ABSENT OR NOT VOTING;

COUNTY OF LAKE

ATTEST: CAROL J. HUCHINGSON  
Clerk to the Board of Supervisors

\_\_\_\_\_  
Chair Board of Supervisors

APPROVED AS TO FORM:  
ANITA L. GRANT

By: \_\_\_\_\_

Deputy

By: \_\_\_\_\_