



Board of Supervisors
Meeting Date: May 23, 2017
Prepared By: Julie Benson
Preparer Phone: 530-527-8020
Preparer Email: jbenenson@co.tehama.ca.us
Regular Item

**ENVIRONMENTAL HEALTH DEPARTMENT / CODE ENFORCEMENT -
Environmental Health Director Tim Potanovic and Code Enforcement Officers
Keith Curl, Clint Weston and Deputy Lester Squires**

Requested Action(s)

- a) Public Nuisance Administrative Penalties and Costs of Abatement Lien Hearing Pursuant to Chapter 9.06 of the Tehama County Code and Government Code section 53069.4 and section 25845:
 - 1) HEARING - Conduct Hearing to review the enforcing officer's report of the amount of administrative penalty and costs of abatement, and to determine whether, and in what amount, the administrative penalty and/or costs of abatement shall be enforced as liens against the affected properties listed below:
 - a) Norm Masterson c/o James Wood
 - b) Ith Sounnakhone and Khanthalaisy Norvang
 - c) Jovita E. Farias
 - d) Janice A. Young and Ron E. Young
 - e) Darla J Zeimet, Karen Dougan, Tami L. Schaller
 - 2) RESOLUTION NO. 2017-58 - Request adoption of an Administrative Penalty Resolution making determinations and ordering that the amount of administrative penalty relating to public nuisance be enforced as liens against the affected properties and further ordering recordation of notices of administrative penalty liens, pursuant to Chapter 9.06 of the Tehama County Code and Government Code section 53069.4
 - 3) RESOLUTION NO. 2017-59 - Request adoption of Abatement Lien Resolution making determinations and ordering that the costs of abatement and costs of administration relating to the abatement of public nuisance be specially assessed against the affected properties and further ordering recordation of notices of abatement liens, pursuant to Chapter 9.06 of the Tehama County Code and Government Code Section 25845

Financial Impact:

Pursuing assessment and collection of liens arising from unpaid administrative penalties and costs of abatement will facilitate the Department's compliance with Chapter 9.06 of the Tehama County Code and Government Code Section 53069.4 and Section 25845

Background Information:

The Tehama County Code, with respect to marijuana abatement, has two distinct sections which allow for the county to impose liens against property for the unlawful cultivation of marijuana and the abatement of said marijuana. Both sections require a hearing and for the Board to determine the amounts owed to the County prior to the recordation of liens. Although somewhat similar in concept, the two sections of the code (described in detail below) have very different functions and consequences for property owners. It should be noted that such liens are only imposed after an initial administrative hearing, before the County's appointed hearing officer, to determine that an unlawful marijuana cultivation nuisance exists on the subject premises, and the appropriate remedy (i.e., abatement and/or daily penalty).

First, Tehama County Code section 9.06.140 (and Government Code section 25845) allow for the actual cost incurred by the County to abate the nuisance (including the cost of administration), in this case marijuana, to be specially assessed as a lien against the property where the nuisance existed, and to have said lien recorded against the property on the tax roll. This is known as a "super-priority lien" and the failure to pay that lien within five (5) years of assessment may lead to a tax sale of the property.

In the past year, the Sheriff's Office and Environmental Health Department have incurred abatement costs totaling \$779.84 to remove marijuana-related nuisances at the properties described in Attachment "B-1." Under the Tehama County Code, the property owner(s) have the right to a noticed hearing before the Board of Supervisors and to present evidence to the Board why said costs are unreasonable or should otherwise not be recorded as a special assessment lien against their property. The Board's role during the hearing is to determine whether the accounting provided by the Environmental Health Department is accurate and to receive evidence from property owners before making a determination as to whether, and in what amount, a special assessment lien should be recorded against the subject properties. The board is also required to determine whether or not the owner(s) had actual knowledge of the unlawful marijuana cultivation, or could have acquired such knowledge through the exercise of reasonable diligence.

Second, Tehama County Code section 9.06.165 (and Government Code section 53069.4) provides for the imposition of fines as an administrative penalty for the unlawful cultivation of marijuana. The fine amount is imposed and serves to discourage the unlawful cultivation of marijuana. This fine is a separate penalty from the cost of abatement. The County Code allows the County to collect the fine by imposing a lien against the properties when amounts due are not paid within ninety (90) days, and if no timely appeal has been filed with the Superior Court. All of the fines as stated in Attachment "B-1" are more than ninety (90) days old and have not been appealed to the Superior Court. The total amount of these fines is \$32,000.00.

Unlike abatement costs, when these fines become liens, they are not super-priority liens, i.e., these fines are not placed on the tax roll and will not result in a tax sale of the properties. Instead, they are imposed in the same manner as a judgment lien. They will have lower priority than previously recorded liens, and higher priority than anything recorded later. (The Board may, at a later date, opt to either go through a judicial foreclosure process in order to collect the amounts of these fines and/or convert the fines into money judgments against the property owners; however, such action is not being requested at this time.)

The Tehama County Code requires the Board of Supervisors to conduct a hearing

before ordering the recordation of liens related to these fines. Property owners may present evidence regarding whether or not a lien should be recorded against their property, however, the underlying determinations that the property constituted a public nuisance due to unlawful marijuana cultivation, and the amount of the daily administrative penalty imposed for the nuisance, have already been finalized through the administrative hearing process that took place when the initial Notice of Violation was served, and are not at issue during this hearing.

Attachment List:

Masterson - Woods, 7273 Pony Place NOH (PDF)
Sounnakhone - Khanthalaisy, 16527 Stagecoach NOH (PDF)
Vargas, 7204 Horseshoe Dr., NOH (PDF)
Zeimet-Dougan-Schaller 18475 Del Norte Dr., NOH (PDF)
Young 17482 Stagecoach Rd., NOH (PDF)
MJ Resolution - Lien Administrative Penalties-5-23-17 (PDF)
MJ Resolution - Liens Abatement and Administration Costs-5-23-17 (PDF)
A-1 Notice of Administrative Penalty Lien - recordable document (PDF)
A-2 Notice of Abatement Lien - recordable document (PDF)
B1 Administrative Penalty and or Abatement Costs (PDF)