



Department of Development Services

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MEMORANDUM

TO: Board of Supervisors

FROM: Tim Snellings, Director – Department of Development Services

RE: Annual Report for 2017 Medical Marijuana and Adult Use Recreational Marijuana Cultivation Regulation Code Enforcement Program

DATE: March 27, 2018

Recommendation

Accept the Annual Report for 2017 Medical Marijuana and Adult Use Recreational Marijuana Cultivation Regulation Code Enforcement Program for Information.

Summary

The Butte County Code Enforcement Division enforces Chapter 34A of the Butte County Code, Medical Marijuana Cultivation Regulation and Chapter 34C, Nonmedical Marijuana Ordinance, supported by law enforcement officers from the Butte County Sheriff's Office and the District Attorney's Office. Enforcement provisions in the calendar year focused on Inspections, Nuisance Abatement Hearings and Administrative Penalties to achieve compliance.

In 2017, the Code Enforcement Division received 495 complaints alleging violations for Chapter 34A and Chapter 34C. This was up from complaints in 2016, which had 433. When the 2017 season ended, the total number of cases closed by Code Enforcement Officers for alleged marijuana violations was 447. A case is assigned a closed status through compliance, abatement by the County, or harvest.

In 2017, Code Enforcement Officers issued 62 medical marijuana Nuisance Abatement Hearing Notices. Of those 62 cases, 14 self-abated or harvested prior to the hearings. County Counsel prepared the remaining 48 cases for Nuisance Abatement Hearings. The hearings were held and the County prevailed in 47 of those cases. A total of 4,848 plants, covering approximately 378,276 square feet (8.68 acres), were removed through the Code Enforcement process. Most of those plants were removed prior to Nuisance Abatement Hearings. The enforcement program had many successes throughout the year including gaining compliance in over 80% of the reported complaints.

Public Outreach

The goal of the enforcement program was to achieve compliance from those growing medical marijuana and adult use recreational marijuana. Development Services conducted several public outreach activities in 2017. The growing restrictions were posted on the Department's website and in brochures. Code Enforcement provided brochures to community groups and individuals interested in cultivation.

Program Implementation

The enforcement program was implemented by Code Enforcement using a complaint-driven response model with neighborhood-generated complaints taking priority. In March 2017, Development Services re-hired three Extra Help Code Enforcement Officers to respond to complaints of violations to the ordinance. Each Code Enforcement Officer underwent a refresher training course on the ordinance, changes in the law and the enforcement procedures. Below is a comparison of cases under Chapters 34A and 34C for the 2016 and 2017 calendar years. Note that citations are no longer part of the Chapters 34A and 34C. This is the reason that there were no citations issued in 2017.

Description	2015	2016	2017
Total # of Complaints	1,489	433	495
Total # of Cases Closed	994	337	447
Citations	894	20	0
Nuisance Abatement Hearings	19	42	48

Complaints: Following discussion by the Board of Supervisors in 2015 expressing interest in focusing on neighborhood-oriented complaints, Development Services began prioritizing those types of cases during the 2016 enforcement period. That general message was part of various outreach efforts. Code Enforcement continued focusing on these types of complaints in 2017 and implemented a case priority numbering system, one through five, based on the severity of the complaint. Of the 495 medical marijuana and adult use recreational cases opened in 2017, 447 of those cases were closed because they were either found to be compliant with the ordinance, became compliant after an investigation abated by the County or harvested. Growers predominantly became compliant by removing plants growing outside the area allowable by the ordinance. With the investigation of marijuana violations, other types of code violations were identified by Code Enforcement Officers. Those cases consisted of Abandoned Vehicles, Unpermitted Structures, Unsafe Structures, Junk and rubbish, Unknown Chemicals, Unpermitted Electrical Wiring, Generator Noise, Setback Violations, Grading Violations, Unpermitted On-Site Sewage Disposal Illegal Water supply, etc.

Nuisance Abatement Hearings: Since May 2017, Code Enforcement issued 62 Abatement Hearing Notices under 34A and 34C. Of those 62 cases noticed, 14 self-abated and the hearings were canceled. County Counsel prepared the remaining 48 cases for Nuisance Abatement Hearings, and the County prevailed in 47 of those cases. The total administrative penalties awarded to date is \$1,970,360. The average award of penalties was \$41,800. Administrative penalties varied based on the hearing officer's discretion of marijuana posting, noticing, abatement and inspection. Those outstanding penalties are in various stages of settlement and collection.

County Department Coordination: Enforcement of the ordinance required participation and coordination from many County Departments including County Administration, County Counsel,

the District Attorney's Office, Public Health, Public Works, Environmental Health, Sheriff and California Department of Fish and Wildlife. Each department provided support to Code Enforcement during implementation of the enforcement program. Butte County Sheriff's Deputies and District Attorney Investigators provided security for Code Enforcement Officers in the field. Code Enforcement also utilized the Sheriff's Office helicopter to perform 13 flight inspections totaling 28 hours. Helicopter use was on existing cases where staff was not able to verify the complaint from the ground. Code Enforcement Officers inspected a total of 250 parcels from the air.

Key Hurdles

The following hurdles/new issues were identified during enforcement of the County's ordinance restricting cultivation of medical and adult use recreational marijuana

- Marijuana administrative hearings were moved from Development Services conference room to Butte County Superior Court in order to utilize Court security features
- A Hearing Officer questioned Code Enforcement Officers regarding the identification of "Sativa" for Chapter 34C
- The Sheriff's Office provided security for Code Enforcement Officers during inspections and a helicopter for aerial inspections, but availability was limited due to maintenance and public safety priorities throughout the County
- At times, communication and cooperation with parcel owner/grower and their legal counsel became difficult and time consuming
- Still receiving some "Google Map" complaints

Key Successes

The following successes were identified during enforcement of the County's ordinance restricting cultivation of medical and adult use recreational marijuana.

- The enforcement efforts by Code Enforcement staff led to the destruction of 4,848 marijuana plants that were not compliant with Chapters 34A and 34C.
- The abatement process allowed for over 378,276 square feet of marijuana to be removed.
- Improvements to the Nuisance Abatement process from 2016 allowed officers to observe more growers destroying marijuana plants during inspections.
- There was excellent inter-departmental coordination to prioritize resources and implement the program, including the provision of security for Code Enforcement field staff by Sheriff's Deputies.
- County staff held five community meetings to educate the public on program requirements.

- The Sheriff's Office provided a helicopter for 13 air inspections providing access to areas that would have otherwise been difficult to access, which helped to facilitate an efficient process and quicker response to neighbor versus neighbor complaints.
- Helicopter inspections allowed officers to observe 250 parcels from the air that were inaccessible from the ground for a variety of reasons. Teamwork between the Sheriff's Office and Code Enforcement created a smoother process for helicopter inspections when available.
- Teamwork between County Counsel and Code Enforcement Officers allowed improved clarification for Hearing Officers for violations of Chapter 34A and 34C.
- The provisions of the ordinance that allowed for the award of penalties and costs were conveyed in a manner to the Hearing Officers that led to the County being awarded the full amount of penalties allowed.

Next Steps for 2018

Development Services is preparing for the 2018 growing season and plans to modify the enforcement program based on lessons from 2017. With this understanding, Code Enforcement will administer a similar program for 2018 as it did in 2017 with the following: continue to receive complaints from all sources; prioritize neighbor/neighbor complaints, large grows, sites with multiple violations, and illegal structure complaints for indoor grows. From there, Code Enforcement will work down "the list" to the rest of the complaints. Having a consistent ordinance for the entire 2017 AND 2018 growing seasons will offer stabilization for the medical marijuana (Chapter 34A) and adult use recreational (Chapter 34C) enforcement programs. Adult use nonmedical marijuana and State implementation of their Cannabis Programs has caused, and will likely continue to cause some confusion for members of the public. Development Services will continue to coordinate with County Administration, the Sheriff's Office, County Counsel, and the District Attorney's Office to develop a sustainable, cost-effective plan for providing Code Enforcement Officers with security for site inspections. Development Services will monitor activities and enforcement demands during 2018 and plan toward 2019 recognizing there is a new State regulatory program in effect. If additional staffing resources are needed during the year, the Department will return to the Board of Supervisors.