

**ORDINANCE NO. 3362**

**AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO AMENDING CHAPTERS 22.40, 23.08, 22.74, 23.10 AND 1.05 OF THE COUNTY CODE TO CLARIFY VIOLATIONS UNDER CHAPTERS 22.40 AND 23.08 ARE PER PLANT FOR ADMINISTRATIVE FINES UNDER CHAPTER 1.05, AUTHORIZE THE OFFICE OF COUNTY CANNABIS HEARING OFFICER TO CONDUCT NUISANCE ABATEMENT HEARINGS UNDER CHAPTERS 22.74 AND 23.10 FOR NUISANCES RELATED TO CANNABIS ACTIVITIES, MODIFY PROCEDURAL REQUIREMENTS FOR NUISANCE ABATEMENT UNDER CHAPTERS 22.74 AND 23.10 RELATED TO CANNABIS ACTIVITIES AND MODIFY PROCEDURAL REQUIREMENTS FOR ADMINSTRATIVE FINES UNDER CHAPTER 1.05 RELATED TO CANNABIS ACTIVITIES**

WHEREAS, on November 27, 2017, the Board of Supervisors adopted a cannabis ordinance, Ordinance Nos. 3357 and 3358 ("Cannabis Ordinance"), which sets forth comprehensive regulations upon cannabis activities in the unincorporated area of San Luis Obispo County, including land use permit requirements on non-exempt cannabis activities;

WHEREAS, the Cannabis Ordinance established the Office of County Cannabis Hearing Officer pursuant to Government Code sections 25845 and 27720 to conduct hearings regarding permit revocation and nuisance abatement for violations under the Ordinance ("Cannabis Hearing Officer Program");

WHEREAS, illegal cannabis related activities in the unincorporated area of San Luis Obispo County can adversely affect the health, safety, and well-being of the county and its residents, including potential criminal activity, degradation of the natural environment, obnoxious smells, exposure to fertilizers and pesticides, and fire hazards;

WHEREAS, experience in San Luis Obispo County and elsewhere demonstrates that cannabis related activities are often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety;

WHEREAS, cannabis activities often involve the construction or use of other structures or paraphernalia in a manner which violates, and constitutes a nuisance under, other County ordinances;

WHEREAS, the Cannabis Hearing Officer Program currently only applies to active violations of the Ordinance, specifically the ongoing cultivation, manufacture, distribution or sale of cannabis;

WHEREAS, violations of other County ordinances related to active, dormant or abandoned cannabis activities would need to follow existing nuisance abatement procedures under Chapters 22.74 and 23.10 of the County Code, including a hearing in front of the Board of Supervisors;

WHEREAS, Code Enforcement and the Sheriff's Office currently estimate there are approximately 200 property sites in unincorporated county which have remnants of dormant or abandoned unpermitted cannabis cultivation operations, including approximately 150 property sites in the California Valley subdivision area;

WHEREAS, Code Enforcement and the Sheriff's Office have determined the combination of all or some of the following features, unrelated to a readily apparent allowable permitted use, are indications of a dormant or abandoned cannabis cultivation operation: wood or chain link fences with tarp, plywood or similar screening, storage structures, tarps, raised or ground-level plant beds with no active plantings, above ground water storage tanks or pools, hoop structures, greenhouses and frames, irrigation lines, pesticides, fertilizers and apparent use of tents, storage sheds, RVs or other unpermitted structures for living quarters;

WHEREAS, Code Enforcement and the Sheriff's Office desire to proceed with abatement of dormant or abandoned unpermitted cannabis activities, including dormant or abandoned cannabis cultivation operations in the California Valley subdivision area, as soon as practicable;

WHEREAS, Code Enforcement and the Sheriff's Office estimate there are over 150 dormant or abandoned cannabis cultivation sites in the California Valley subdivision area which would each require, under Chapters 22.74 and 23.10 of the County Code, a separate hearing before the Board of Supervisors regarding whether an abatement order should be issued related to violations of County ordinances other than the Cannabis Ordinance, such as unpermitted structures or other paraphernalia related to a cannabis activity;

WHEREAS, requiring such abatement hearings to go forward before the Board of Supervisors would not be an effective and efficient use of the Board's time or resources, and time constraints would likely limit the County's ability to timely and effectively abate nuisances related to cannabis activities and deter such unpermitted and illegal cannabis related activity in the future;

WHEREAS, because cannabis related activities in violation of County Code are a public nuisance with unique impacts and a need for time-sensitive abatement in order to render local regulations meaningful, a more streamlined enforcement and abatement process is necessary and

proper for abatement of activities related to active, dormant or abandoned cannabis activities; illegal cannabis activities are potentially lucrative enough to incentivize unlawful activity for as long as possible and may be quickly restarted if cannabis related structures and paraphernalia go unabated; the intent of the Board of Supervisors is to disincentivize and deter such conduct by adopting a streamlined enforcement and abatement process for violations related to cannabis activities;

WHEREAS, the Board of Supervisors desire to have the Cannabis Hearing Officer Program conduct abatement hearings under Chapters 22.74 and 23.10 of the County Code related to active, dormant or abandoned cannabis activities to ensure a streamlined enforcement and abatement process for cannabis related land use violations;

WHEREAS, the Board of Supervisors desire to modify the procedures for the issuance, imposition and final determination of administrative fines under Chapter 1.05 to ensure a streamlined enforcement and administrative fine process for cannabis related land use violations;

WHEREAS, by adopting this ordinance, San Luis Obispo County will achieve a significant reduction in the various public and environmental harms caused or threatened by activities related to active, dormant or abandoned cannabis cultivation, manufacture, distribution or sale in the unincorporated area of the County;

WHEREAS, adoption of this ordinance will ensure that the streamlined enforcement procedure available under the Cannabis Hearing Officer Program becomes available to address cannabis related violations early enough in the outdoor growing season to deter and abate cannabis related activities on unpermitted sides or to operate in an unpermitted manner;

WHEREAS, pursuant to Government Code sections 25845, subdivision (i) and 27721, the Board of Supervisors desires to delegate the duties and powers under Chapters 22.74 and 23.10 of the County Code to the Cannabis Hearing Officer Program for violations related to cannabis activities, including conducting abatement hearings and determination of post-abatement costs and assessments;

WHEREAS, pursuant to Government Code sections 53069.4 and 27721, the Board of Supervisors desires to authorize the Cannabis Hearing Officer Program to adjudicate administrative fines levied by code enforcement officers under Chapter 1.05 of the County Code related to cannabis activities, in lieu of any administrative appeal rights;

WHEREAS, these amendments are made pursuant to Government Code sections 25845 and 53069.4 and consist of procedural changes to how the County may address activities and uses already a violation and nuisance under County Code; and, therefore, do not fall under Government Code section 65853 because these amendments do not change the zoning of any parcels or have the effect of regulating the use of buildings, structures, and land.

NOW THEREFORE, The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1. Section 22.40.130 – Enforcement of the San Luis Obispo County Code is amended to read as follows:

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- A.** Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapter 22.74 of this Code, and any other action authorized by law:
1. Additionally, it shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. 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. No proof of knowledge, intent, or other mental state is required to establish a violation.
  2. Any person violating any of the provisions of this Chapter shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.
  3. Each and every cannabis plant, including both immature and mature (flowering) plants, cultivated in violation of this Chapter shall constitute a separate violation subject to the penalties and fines of this Chapter, Chapter 1.05 and Chapter 22.74.
  4. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this Chapter.

SECTION 2. Section 23.08.432 of the San Luis Obispo County Code is amended to read as follows:

**23.08.432 – Enforcement:** The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- a. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapter 23.10 of this Code, and any other action authorized by law:
  - 1. Additionally, it shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. 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. No proof of knowledge, intent, or other mental state is required to establish a violation.
  - 2. Any person violating any of the provisions of this Chapter shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.
  - 3. Each and every cannabis plant, including both immature and mature (flowering) plants, cultivated in violation of this Chapter shall constitute a separate violation subject to the penalties and fines of this Chapter, Chapter 1.05 and Chapter 23.10.
  - 4. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this Chapter.

SECTION 3. Chapter 22.74.150 – Nuisance Abatement of the San Luis Obispo County Code is amended to include the following:

- G. Cannabis Activity Related Violations.** Pursuant to Government Code sections 25845, subdivision (i) and 27721, the duties and powers of the Board of Supervisors under Section 22.74.150 are hereby delegated to the Office of County Cannabis Hearing Officer, established under Section 22.40.130.C, for all violations of Titles 6, 8, 19 or 22 of this Code which relate to or arise from a cannabis activity in the County's discretion, whether or not such cannabis activity is ongoing, dormant or abandoned. Such duties and powers include conducting abatement hearings and determination of post-abatement costs and assessments. For violations which relate to or arise from a cannabis activity, the Code

Enforcement Officer is not required to first pursue the procedures of Section 22.74.105 or send a Notice of Nuisance under Section 22.74.150.C, and instead, upon a determination that a nuisance exists, may proceed immediately with a Notice of Nuisance Abatement under Section 22.74.150.D, with a notice to appear before the Cannabis Hearing Officer at a stated time and place not less than 5 days after service of the notice, to show cause why stated conditions should not be found to be a nuisance, and why the nuisance should not be abated by the County. The foregoing notice may be consolidated with a notice of nuisance abatement under Section 22.40.130.B, and with a notice of violation and/or notice of fine under Sections 1.05.030 and 1.05.050. Notwithstanding Section 22.74.150.E.2.a, the Cannabis Hearing Officer may order that the owner or other affected person abate the nuisance within two (2) calendar days of the date of service of the decision of the Cannabis Hearing Officer, and, in the event the abatement is not completed, the Code Enforcement Officer is empowered and authorized to enter upon the property and abate the nuisance. Nuisances subject to abatement under this subsection include, but are not limited to: wood or chain link fences with tarp, plywood or similar screening; storage structures; raised or ground-level plant beds and pots; above ground water storage tanks or pools; hoop structures, greenhouses and frames, irrigation lines; generators; small and large machinery; manufacturing and processing equipment or implements; artificial lighting; pesticides; fertilizers; trash or refuse; and, tents, RVs or other unpermitted structures used for living quarters.

SECTION 4. Chapter 23.10.150 – Nuisance Abatement of the San Luis Obispo County Code is amended to include the following:

- g. Cannabis Activity Related Violations.** Pursuant to Government Code sections 25845, subdivision (i) and 27721, the duties and powers of the Board of Supervisors under Section 23.10.150 are hereby delegated to the Office of County Cannabis Hearing Officer, established under Sections 22.40.130.C and 23.08.432.c, for all violations of Titles 6, 8, 19 or 23 of this Code which relate to or arise from a cannabis activity in the County's discretion, whether or not such cannabis activity is ongoing, dormant or abandoned. Such duties and powers include conducting abatement hearings and determination of post-abatement costs and assessments. For violations which relate to or arise from a cannabis activity, the Code Enforcement Officer is not required to first pursue the procedures of Section 23.10.105 or send a Notice of Nuisance under Section 23.10.150.c, and instead, upon a determination that a nuisance exists, may proceed immediately with a Notice of Nuisance Abatement under Section 23.10.150.d, with a notice to appear before the Cannabis Hearing Officer at a stated time and place not less than 5 days after service of the notice, to show cause why stated conditions should not be found to be a nuisance,

and why the nuisance should not be abated by the County. The foregoing notice may be consolidated with a notice of nuisance abatement under Section 23.08.432.b, and with a notice of violation and/or notice of fine under Sections 1.05.030 and 1.05.050. Notwithstanding Section 23.10.150.e.2.i, the Cannabis Hearing Officer may order that the owner or other affected person abate the nuisance within two (2) calendar days of the date of service of the decision of the Cannabis Hearing Officer, and, in the event the abatement is not completed, the Code Enforcement Officer is empowered and authorized to enter upon the property and abate the nuisance. Nuisances subject to abatement under this subsection include, but are not limited to: wood or chain link fences with tarp, plywood or similar screening; storage structures; raised or ground-level plant beds and pots; above ground water storage tanks or pools; hoop structures, greenhouses and frames, irrigation lines; generators; small and large machinery; manufacturing and processing equipment or implements; artificial lighting; pesticides; fertilizers; trash or refuse; and, tents, RVs or other unpermitted structures used for living quarters.

SECTION 5. Chapter 1.05 – Administrative Fines of the San Luis Obispo County Code is amended to include the following:

**1.05.080 – Cannabis Activity Related Violations.**

For violations which relate to or arise from a cannabis activity, as that term is defined in Section 22.80.030, the administrative fines identified in a notice of violation issued under Section 1.05.030 by the code enforcement officer shall become effective immediately upon expiration of the correction period identified in the notice of violation, and no further notice of fine is required under Section 1.05.050 in order for the administrative fines to become effective, and the fines shall continue to accrue daily until the violation has been fully abated and verified by the code enforcement officer. The correction period identified in the notice of violation shall be no less than five (5) calendar days after service of the notice. Pursuant to Government Code sections 53069.4 and 27721, for all violations of County Code which relate to or arise from a cannabis activity, whether or not such cannabis activity is ongoing, dormant or abandoned, the code enforcement officer may seek final determination of any administrative fines levied pursuant to this Chapter by the Office of County Cannabis Hearing Officer, established under Section 22.40.130.C, in lieu of any appeal rights under Section 1.05.060. In such event, notice to appear before the Cannabis Hearing Officer at a stated time and place not less than five (5) calendar days after service of the notice should be provided to the responsible persons. The notice of violation and/or notice of fine may be consolidated with a notice(s) of nuisance abatement under Sections 22.40.130.B, 22.74.150, 23.08.432.b and 23.10.150. The hearing

Cannabis Hearing Officer shall issue a written decision which affirms, reverses or modifies the administrative fines within two (2) calendar days after the hearing. The decision shall be mailed to, or personally served upon, the responsible persons and the code enforcement officer. The decision shall be final when signed by the Cannabis Hearing Officer and served as herein provided, and only subject to judicial review in accordance with the time lines and provisions as set forth in Government Code section 53069.4.

SECTION 6. These amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 26055(h) of the California Business and Professions. This Ordinance is also exempt from CEQA because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment (CEQA Guidelines §15061(b)(3)), the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines §15060(c)(2)) and because it consists of regulations to streamline the public abatement and administrative fine process related to cannabis activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by (Class 7 and Class 8, CEQA Guidelines §§15307, 15308).

SECTION 7. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 8. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

SECTION 9. Sections 2 and 4 of this ordinance shall become operative automatically, pursuant to 14 California Code of Regulations §13551(b)(1), upon the certification without any modifications or amendments to said amendments by the California Coastal Commission and upon acknowledgment by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification pursuant to 14 California Code of Regulation §13544. In the event the California Coastal Commission recommends modifications to said amendments,

the amendments with modification shall be processed in accordance with Government Code §65350 et seq., before final local government adoption of the amendments with modifications suggested by Coastal Commission pursuant to 14 California Code of Regulations §13551(b)(2), or before the Board of Supervisors resubmits, pursuant to Public Resources Code Section 30512 and 3013, any additional amendments to satisfy the Commission's recommended changes.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 20<sup>th</sup> day of March, 2018, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, Lynn Compton, Adam Hill, Debbie Arnold and  
Chairperson John Peschong

NOES: None

ABSENT: None

ABSTAINING: None



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Chairperson of the Board of Supervisors,  
County of San Luis Obispo, State of California

ATTEST:

Tommy Gong  
County Clerk and Ex-Officio Clerk  
of the Board of Supervisors  
County of San Luis Obispo, State of California

By: Annette Ramirez  
Deputy Clerk