

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

**ORDINANCE AMENDING MENDOCINO COUNTY CODE CHAPTERS 1.04, 1.08 AND 16.30 RELATING TO CODE ENFORCEMENT PROCEDURES AND REGULATIONS, INCLUDING ADMINISTRATIVE PENALTY INCREASES RELATING TO STORMWATER, CANNABIS AND BUILDING VIOLATIONS**

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

**Section 1.** Section 130 of Chapter 04 of Title 1 of the Mendocino County Code is created to read as follows:

**Sec. 1.04.130 – Recordation of Notice of Violation**

- A. Whenever a person authorized by the County of Mendocino issues a notice regarding a violation of the Mendocino County Code that relates to real property, such notice may be recorded with the Mendocino County Recorder pursuant to the provisions in this section.
- B. The provisions of this section do not limit or otherwise restrict the recording of notices that are permitted to be recorded by some other authority, such as a different ordinance or statute.
- C. The notice of violation to be recorded shall:
  - 1. Specify the names of the record owners,
  - 2. Describe the real property, and
  - 3. Describe the violations on the property.
- D. At least thirty (30) days prior to recording such notice the County shall advise the owner or owners of the property to be affected by the notice of violation about the County's intent to record the notice of violation.
  - 1. Such advisement about the County's intent to record shall be provided to the owner(s) in writing, and may be served on the owner(s) in person, or by first class mail, postage prepaid.
  - 2. If service is made by mail, the County may use the address as reported on the latest equalized assessment roll, and the notice shall not be recorded until after at least thirty-five (35) days from the date of mailing.
- E. The notice of intent to record shall specify a date certain, prior to recordation, on or before which evidence and/or arguments may be presented or submitted to the issuing department as to why the notice of violation should not be recorded.

- F. Evidence that is timely submitted or presented to the issuing department shall be reviewed and considered by the issuing department, and the department's written response shall become the final administrative determination.
- G. If evidence is not timely presented or submitted as to why a notice should not be recorded, then the owner(s) and any other responsible party waive their right to administrative review, and the notice of intent to record will become the final administrative determination.
- H. After issuance of the notice of intent to record, the notice of violation may be recorded immediately after the requisite time period has expired if evidence was not timely presented or submitted, and if evidence was timely presented or submitted, such notice of violation may be recorded after the department's written response and after expiration of the requisite time period.

**Section 2.** Chapter 08 of Title 1 of the Mendocino County Code is amended in its entirety to read as follows:

### **Chapter 1.08 – ADMINISTRATIVE CITATIONS AND PENALTIES**

#### **Sec. 1.08.010 - Findings and Purpose.**

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. There is a need to establish various mechanisms for the remediation of violations of county ordinances.
- B. Traditional methods of code enforcement through civil litigation and criminal prosecution can be time-consuming and ineffective.
- C. Enforcing the Mendocino County Code through administrative citations enhances the county's ability to recover its costs and maintain the integrity of the code enforcement system. It also improves the county's ability to impose and collect penalties from violators, which helps to deter future violations.
- D. Pursuant to Section 53069.4 of the California Government Code, the Board of Supervisors elects to create a system of administrative citations and hearings to ensure prompt and responsive compliance with the Mendocino County Code and state law.

#### **Sec. 1.08.020 - Citation.**

This chapter shall be referred to as the "Mendocino County Administrative Citation Ordinance."

#### **Sec. 1.08.030 - Definitions.**

- A. "Board" means the Mendocino County Board of Supervisors.

- B. "Citation" or "Administrative Citation" means a civil citation issued pursuant to this chapter stating that there has been a violation of one (1) or more provisions of the code and setting the amount of the administrative penalty to be paid by the Responsible Party.
- C. "Code" means the Mendocino County Code.
- D. "County" means the County of Mendocino.
- E. "Days" means calendar days.
- F. "Department" means the County department that issued the Citation.
- G. "Enforcement Officer" means any officer or employee authorized by ordinance or by resolution of the Board of Supervisors to enforce the Mendocino County Code, or such officer's or employee's designee.
- H. "Responsible Party" means an individual or legal entity, or the agent or legal guardian of such individual or entity, whose action or failure to act caused or contributed to a violation of the Code, which specifically includes any owner of land on which a violation exists; additionally, this definition shall be modified as described in Section 1.08.060(H)(4) if such section applies.

**Sec. 1.08.040 - Scope of Chapter.**

- A. This chapter may be used by any officer, agent or employee of the County of Mendocino who is authorized to enforce the Mendocino County Code, or any non-codified Mendocino County ordinance or law. However, prior to any issuance of a Citation, the Department shall first coordinate with County Counsel to secure the availability of a Hearing Officer.
- B. Use of this chapter for the enforcement of code provisions shall be at the sole discretion of the County, its officers, agents and employees.
- C. This chapter may be utilized to the extent that the provisions herein do not conflict with due process or any other law.
- D. This chapter shall not apply to the extent that other provisions of the Code, or other applicable local, state or federal law provide an exclusive remedy.

**Sec. 1.08.050 - Nonexclusivity and Election of Proceedings.**

This chapter provides for enforcement proceedings that are supplemental to all other enforcement proceedings provided elsewhere in the Code, or by state or federal law, whether administrative, civil or criminal in nature. As such, the provisions of this chapter may be utilized alone or in conjunction with other provisions of the Code to enforce all the provisions of the Code. This chapter shall not apply to the extent that other provisions of the Code state an exclusive remedy within a particular title or chapter. Election to employ one (1) or more proceedings

provided in this chapter shall be at the sole discretion of the County, and shall be without prejudice to the County choosing to also proceed simultaneously or subsequently by pursuing different enforcement proceedings with respect to the same violation.

**Sec. 1.08.060 - Administrative Penalty; Amounts.**

- A. Any Responsible Party violating any provision of the Code, any non-codified ordinance or other Mendocino County law, or any law that is specifically adopted or otherwise incorporated into the Code, may be issued an Administrative Citation by an Enforcement Officer in accordance with the provisions of this chapter.
- B. Each and every day a violation of the provisions of the Code exists constitutes a separate and distinct offense.
- C. The Enforcement Officer may issue a Citation for a violation not committed in the official's presence, if the public official has determined through investigation that the Responsible Party did commit or is otherwise responsible for the violation.
- D. A civil fine shall be assessed by means of an Administrative Citation issued by the Enforcement Officer and shall be payable directly to the Department which issued the Citation.
- E. Unless otherwise provided for in this chapter or elsewhere in the Code, the amount of the fine for each violation shall be:
  - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
  - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same Code provision within one (1) year from the date of the first violation;
  - 3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same Code provision within one (1) year from the date of the first violation.
- F. Unless otherwise provided for in this chapter or elsewhere in the Code, the amount of the fine for each violation of any local building or safety code, including but not limited to a violation of MCC Title 18, shall be:
  - 1. A fine not exceeding one hundred thirty dollars (\$130.00) for a first violation;
  - 2. A fine not exceeding seven hundred dollars (\$700.00) for a second violation of the same Code provision within one (1) year from the date of the first violation;

3. A fine not exceeding one thousand three hundred dollars (\$1,300.00) for each additional violation of the same Code provision within one (1) year from the date of the first violation.
4. A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same Code within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

G. If the maximum fines allowed to be charged by California Government Code section 53069.4, for violations that are infractions increases or decreases, then the revised amounts allowed or permitted by California state law shall automatically apply to 1.08.060(E) & (F), as of the effective date of the change in State law, for all offenses for which a different penalty has not otherwise been provided by the Code.

H. Penalties for Certain Cannabis Related Violations.

1. The penalties in this subsection, 1.08.060(H), may be used in addition to or as an alternative to any other penalties or remedies that may be applicable or available.
2. Cultivation of cannabis in the absence of a required County permit, or authorization, and a required State License is a violation of this Code that shall be subject to an administrative penalty of up to one hundred dollars (\$100.00) per cannabis plant.
  - a. For the purpose of this subsection, 1.08.060(H)(2), a cannabis plant includes each mature or immature plant of *Cannabis sativa* L., *Cannabis indica*, or *Cannabis ruderalis*, which has breached the surface of the soil or other media in which it is growing.
  - b. If a per plant penalty is imposed pursuant to this subsection, 1.08.060(H)(2), the per plant penalty may be increased by the amounts specified below for each circumstance that applies:
    - i. By up to an additional one hundred dollars (\$100.00) for each plant that is occupying space on graded land for which the required grading permit has not been obtained and finalized;
    - ii. By up to an additional one hundred dollars (\$100.00) for each plant that is occupying space in a structure for which the required building permit has not been obtained and finalized.

- iii. By up to an additional one hundred dollars (\$100.00) for each plant if the plant is grown on a parcel on which any tree species identified in MCC section 10A.17.040(K) was removed for the purpose of growing cannabis. It shall be prima facie evidence of purpose if cannabis is being grown on or near the location at which the identified tree species were removed.
- 3. Each violation of Mendocino County Code Chapter 10A.17 shall be subject to an administrative penalty of up to one thousand dollars (\$1,000.00).
- 4. For a violation based on cultivation of cannabis without a permit or license, each of the following shall be considered a responsible party and shall be jointly and severally liable for the penalties imposed pursuant to this Chapter:
  - a. Any individual or legal entity considered a responsible party as defined by this Chapter, except as modified by this subsection 1.08.060(H)(4)(b), and specifically including but not limited to a person or entity that engages in the cultivation of cannabis without the required authorization from both the County and State;
  - b. Each and every landowner of the property on which the cannabis is being cultivated in the absence of the required authorization from both the County and State, unless the landowner can demonstrate the following:
    - i. The tenant of the property, or renter, leasee, or agent thereof, was the entity cultivating the cannabis, and
    - ii. That such entity was lawfully occupying the property pursuant to a written lease or rental agreement with the landowner, and that such written agreement did not allow for the cultivation of cannabis contrary to any California State or local law; and
    - iii. The landowner had no actual or constructive knowledge that cannabis was being cultivated on the property in an illegal manner, and that the landowner had no knowledge that the tenant of the property, renter, leasee, or agent thereof, had any intention of cultivating cannabis without a permit.
- I. Whenever the County finds that a person is maintaining a public nuisance as defined by the MCC or a non-codified Mendocino County ordinance, including but not limited to MCC section 8.75.040, such maintenance of the public nuisance is a violation of the MCC and may be enforced by imposition of administrative penalties pursuant to the provisions of this Chapter as an additional or alternative enforcement mechanism.

- J. The administrative penalty shall become effective immediately upon service of the Administrative Citation. Failure to correct a violation within 24 hours of service of a Citation, unless the Citation indicates a longer period of time, may result in the issuance of a subsequent Citation or Citations, which may impose a higher penalty or penalties.
- K. If a Citation indicates that penalties will accrue daily, then for each 24 hour period that the violation remains uncorrected, an additional penalty will be imposed as stated in the Citation, for up to ninety (90) days.
- L. A Citation will have the following effects if it is issued for an uncorrected violation for which a Citation had previously been issued:
  - 1. The penalty imposed by the new Citation will take effect on the day it is served;
  - 2. If a penalty had been accruing daily as a result of the prior Citation, then the prior penalty imposed will cease to accrue upon imposition of the new Citation.
- M. A penalty imposed by a Citation for a single occurrence shall become due immediately upon service of the Citation, and shall be paid to the County no later than thirty (30) days after service of the Citation unless otherwise agreed to by the County.
- N. A penalty imposed by a Citation that specifies a daily accrual amount shall become due on the first day that the penalties no longer accrue – the earlier of either the violation being confirmed by the County as corrected, the service of a subsequent Citation for the same recurring violation, or the expiration of ninety (90 days) after service of the Citation; such penalty due shall be paid to the County no later than thirty (30) days after the penalty becomes due unless otherwise agreed to by the County.
- O. Rescission and Modification of Citation.
  - 1. The daily accrual of penalties associated with an issued Citation may be paused by the Department if such pause is part of a strategy to obtain code compliance.
  - 2. A Citation, along with any associated monetary penalty, may be rescinded and voided by the director of the Department, or authorized designee, if done for the purpose of correcting a mistake by the County, or as part of a strategy to obtain code compliance.
  - 3. Citation penalties may be reduced by informal agreement with the Responsible Party by the director of the Department, or authorized designee, if such reduction is part of a strategy to obtain code compliance. However, in the absence of a written compliance agreement or additional Board approval, such informal reduction may not exceed \$25,000.00.

P. Formal written Compliance Agreements.

1. The director of the Department may enter into formal written compliance agreements, also known as compliance plans, with a Responsible Party for the purpose of obtaining code compliance.
2. Compliance agreements may include a waiver or reduction of administrative penalties under the following conditions:
  - a. Such waiver or reduction must be contingent on the successful correction of the violation(s) that formed the basis of the penalty; and
  - b. The agreement must prescribe terms that require the Responsible Party to diligently pursue correction of the violation(s), and to the extent such correction activity is within the control of the Responsible Party a definite time period to take such actions must be specified; and
  - c. The agreement must provide that if the violation(s) is/are not corrected within the prescribed timeframe or diligently pursued, as required, then the full amount of penalties will become due and payable to the County; and
  - d. In the absence of Board approval, a penalty may not be reduced by more than either \$25,000.00 or ninety percent (90%) of the original penalty, whichever is a greater reduction.
3. Written compliance agreements must include the signatures of a Responsible Party, the director of the Department, and County Counsel, but need not include any other signatures.

**Sec. 1.08.070 - Citation for Violation of the Code.**

- A. Pursuant to Government Code section 53069.4(a)(2)(A), when a Code violation involves a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues, which also does not create an immediate danger to health or safety, the Enforcement Officer shall first provide the Responsible Party notice of the violation and a reasonable amount of time to correct or otherwise remedy the violation. A Code Enforcement Officer may determine a reasonable time based on the type of violation and the particular circumstances, however, the provision of thirty (30) days to correct a violation will be considered reasonable in the absence of a showing by the Responsible Party that a longer period of time was necessary. At minimum, the notice of a violation must provide sufficient notice to the Responsible Party of the violation and the time permitted to correct the violation.



- B. Pursuant to Government Code section 53069.4(a)(2)(B), when a Code violation is a building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements, and the violations exists as a result of, or to facilitate, the illegal cultivation of cannabis, the Enforcement Officer may issue an Administrative Citation immediately, without providing notice and time to correct, unless all of the following are true:
1. A tenant is in possession of the property that is the subject of the administrative action;
  2. The rental property owner or agency can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis; and
  3. The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
- C. Unless otherwise specified, the Enforcement Officer may issue an Administrative Citation without first providing notice and time to correct the violation.
- D. The Administrative Citation shall be issued on a form containing:
1. The name and address of the Responsible Party; and
  2. The date, approximate time, and address or definite description of the location where the violation was observed; and
  3. The Code sections or provisions violated and a description of the violation as needed;
  4. The amount of the fine imposed;
  5. A statement explaining how, where, to whom, and within what number of days the penalty shall be paid;
  6. Identification of appeal rights, including the time within which the administrative Citation may be contested and how to contest the Citation;
  7. The signature of the Enforcement Officer issuing the Citation along with the date of issuance of the Citation.
- E. The Administrative Citation shall be served upon the Responsible Party pursuant to Section 1.08.080.
- F. Upon receipt of a Citation, the Responsible Party shall correct the violations and pay the fine to the issuing Department, or file a written request for appeal of the Citation pursuant to the provisions in this Chapter.

- G. Payment of the fine shall not excuse or discharge the Responsible Party from correcting the violation nor shall it bar further enforcement action by the County. If the Responsible Party fails to correct the violation, subsequent Administrative Citations may be issued for maintaining, continuing or repeating the same violation. The amount of the fine for subsequent violations shall increase at a rate specified in this chapter.

**Sec. 1.08.080 - Service Procedures.**

- A. An Administrative Citation shall be served on the Responsible Party by an Enforcement Officer in one of the following ways:
  - 1. Personal service; or
  - 2. First class mail, postage prepaid, to the Responsible Party's mailing address as shown on the County's last equalized property tax assessment rolls, if such address is available, or otherwise to the last known address of the Responsible Party; or
  - 3. Posting the Administrative Citation on any real property within the County in which the Enforcement Officer has knowledge that the Responsible Party has a legal interest. This method of service is only effective if service by mail fails, but posting may be done at any time.
  - 4. Alternative Service. If the person being served agrees, service may be accomplished in any agreeable manner, including but not limited to fax, email, or overnight delivery.
- B. The date of service shall be the date on which the Citation is either personally served, mailed, posted, or in the case of alternative service, the date the County initiates the delivery of the agreed method of service. For the purpose of this section, "mailed" means deposited for mailing with the United States Postal Service, or placed for collection and mailing by way of the County Department's ordinary business practices through which mail is collected and placed for mailing with the United States Postal Service, with postage prepaid.
- C. The time in which an act is to be performed according to law, which is based on the service date described in this section, shall be extended by five (5) days if the service was provided by either mailing or posting.

**Sec. 1.08.090 - Procedure to Appeal an Administrative Citation.**

- A. Time to Appeal Citation. Within ten (10) days from the date that a penalty pursuant to this Chapter becomes due, any recipient of the Citation who is identified as a Responsible Party may contest any aspect of the Citation or penalty imposed.
- B. To appeal the Citation, the recipient must give notice to the Department issuing the Citation before the time to appeal the citation expires by either completing and returning a notice of appeal of Citation form, or by providing a document, in writing, bearing the title, "Appeal of Administrative Citation", containing:
  - 1. the name, address and phone number of the appellant;
  - 2. sufficient information to identify the Citation; and
  - 3. the grounds on which the Citation is being contested.
- C. Every appeal received by the County pursuant to this section may be reviewed to determine if the appeal is complete, valid and timely. If the County determines that the request for appeal is not timely, or is based on grounds not authorized by this Chapter, or is missing information required by this section, the request for appeal may be rejected by the County, and the County will notify the appellant of the same using the contact information provided in the appeal documents, or if no contact information was provided, using the address at which the Citation at issue was delivered. The rejection of an appeal, which is determined to be incomplete, invalid or untimely, does not extend the time in which the appellant has to file its appeal
- D. The Department, having received a complete, valid and timely appeal, shall notify the Office of the County Counsel, which office will set a time, date and location for an Administrative Hearing based on the availability of the Hearing Officer, and which will otherwise cause the matter to be set for an administrative hearing.
- E. A hearing before a Hearing Officer shall be set as soon as practicable, but not less than ten (10) days from the date that the notice of appeal is filed.
- F. In accordance with the noticing provisions set forth in Section 1.08.080, the Office of the County Counsel shall notify the parties in writing, at least ten (10) days prior to the hearing date, of the date and location of the hearing. It shall be sufficient to provide notice to the appellant by using the address listed in the request for appeal.
- G. At least five (5) days prior to the hearing, the Office of the County Counsel shall provide the Hearing Officer the appeal documents, which shall include the appeal documents submitted by the appellant, such as the request for appeal and any other documents submitted to the County by the appellant at the time of the request for appeal, as well as any document(s) that the County chooses to submit to the Hearing Officer, including, without limitation, supporting documentary evidence and/or a memorandum describing the facts and authority relevant to the matter. These appeal documents shall be sent to the

appellant, and it will be sufficient to provide such documents by either first class mail at the address provided in the request for appeal, or by email, if the appellant has provided the County with an email address.

H. The burden of paying the cost of the Hearing Officer shall be as follows:

1. The County shall pay the Hearing Officer directly for the Hearing Officer's services.
2. The County will bear the full cost of the Hearing Officer's services if the Hearing Officer determines that the Administrative Citation was fatally flawed in either substance or procedure, or if the Hearing Officer determines that the appellant is entitled to a hardship waiver to reduce the cost of the penalties.
3. The County is entitled to reimbursement from the appellant for the costs of the Hearing Officer's services under the following circumstances: the Hearing Officer finds that the substance and service of the Citation were proper; a hardship waiver to reduce the costs of the penalties was not granted, even if the penalties were reduced for a different reason; the County requests a finding that they are entitled to reimbursement from the appellant; the appellant is unable to show good cause for why such a finding should not be made or for why a portion of the costs should not be borne by the County; and the Hearing Officer makes a finding that the County is entitled to reimbursement from the appellant for all, or a portion of the costs of the Hearing Officer's services.

**Sec. 1.08.100 - Hardship Waiver.**

- A. Any Responsible Party who is issued a second, third, or other subsequent Citation pursuant to Mendocino County Code section 1.08.060(E) or (F) may seek a financial hardship waiver to reduce the penalty amount imposed by the citation.
- B. An appellant may apply for a hardship waiver by identifying their hardship as grounds for contesting the Administrative Citation, and by following the procedures in this Chapter to contest the Citation.
- C. Such hardship waiver may be granted upon a showing by the Responsible Party that:
  1. The responsible party has made a bona fide effort to comply after the first violation, and
  2. That payment of the full amount of the fine would impose an undue financial burden on the Responsible Party.

**Sec. 1.08.110 - Hearing Officer.**

The Board of Supervisors authorizes the appointment and use of Hearing Officers pursuant to Mendocino County Code Chapter 2.76. The director of the Department shall coordinate with County Counsel, prior to any issuance of Citations, to ensure that a Hearing Officer is appointed for the purpose of presiding at the administrative hearings provided for by this Chapter.

**Sec. 1.08.120 - Hearing Procedures and Rules.**

- A. At any time prior to or after the Hearing, the Hearing Officer may:
  - 1. Request relevant documents or information from any party to the appeal, however, the substantive of the request and response, including any responsive documents, shall be shared with all parties to the appeal;
  - 2. Request that a pre-hearing conference be held by telephone, video conference, or by written correspondence, such as email, for the purpose of addressing preliminary matters of fact, law, or logistics;
  - 3. Request that the Office of the County Counsel send out notices or provide correspondence on behalf of the Hearing Officer;
- B. At any time prior to the Hearing, any party to the appeal may contact the Hearing Officer in writing with respect to the appeal so long as the correspondence is also sent to all other parties to the appeal.
- C. At the prescribed time and place for the hearing, the Hearing Officer shall consider relevant evidence and arguments from all parties, including but not limited to whether or not to confirm, alter or strike down the penalties imposed by the Citation.
- D. The Administrative Citation and any additional documents submitted by the County shall constitute prima facie evidence of the respective facts contained in those documents.
- E. Appellant bears the burden of proving that the citation was flawed and/or that the penalties imposed by the Citation should either be modified or stricken.
- F. The standard of proof shall be a preponderance of the evidence.
- G. Personal information about any reporting party related to the violation(s) shall not be disclosed.
- H. Parties may choose to be represented by an attorney. However, formal rules of evidence or procedure in any proceeding subject to this Chapter shall not apply. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will cause undue consumption of time.

- I. The failure of any appellant of an Administrative Citation to appear at the scheduled hearing shall constitute a failure to exhaust administrative remedies.
- J. The Hearing Officer may continue the hearing and request additional information from the parties prior to issuing a written decision.
- K. The Hearing Officer may issue any orders respecting the logistical administration of the hearing that it deems appropriate and just.

**Sec. 1.08.130 - Administrative order.**

- A. At the conclusion of the hearing and based on the evidence before it, the Hearing Officer shall determine whether to uphold or deny the Administrative Citation. The Hearing Officer will make all other applicable and appropriate findings and determinations, including but not limited to whether or not to grant a hardship waiver, and whether or not the County is entitled to reimbursement for costs of the Hearing Officer services. The Hearing Officer shall state the reasons on which the decisions are based in a written order. The Hearing Officer's decision shall be final.
- B. If the Hearing Officer determines that the Administrative Citation should be upheld, in whole or in part, then the fine amount identified in the Citation, or as otherwise adjusted by the Hearing Officer, shall be immediately due to the Department.
- C. If the Hearing Officer determines that the Administrative Citation should not be upheld, the Hearing Officer shall order the Citation dismissed.
- D. A copy of the written decision and administrative order shall be served personally or by first class United States mail, postage prepaid, upon each appellant and all other parties to the hearing.

**Sec. 1.08.140 - Right to Judicial Review.**

Any Responsible Party aggrieved by an administrative decision of a Hearing Officer or by the decision of the Hearing Officer may obtain further review by filing a petition for review with the Mendocino County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

**Sec. 1.08.150 - Failure to Pay Fines.**

The Enforcement Officer, issuing Department, or County may pursue any remedy authorized by law to collect the administrative penalties if such fines are not timely paid pursuant to the provisions of this chapter.

**Sec. 1.08.160 - Notices.**

- A. The Administrative Citation and all notices to be given by this chapter shall be served on the Responsible Party in accordance with the provisions of this chapter.
- B. If the Administrative Citation(s) and/or any other notice(s) is properly given or served pursuant to this chapter, the failure to receive the Administrative Citation(s) or any other notice shall not affect the validity of proceedings conducted pursuant to this chapter.

**Sec. 1.08.170 - Severance.**

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

**Section 3.** Section 033 of Chapter 30 of Title 16 of the Mendocino County Code is created to read as follows:

**Sec. 16.30.033. - Ultimate responsibility of discharger.**

The requirements of this Chapter are minimum standards; therefore this Chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the United States caused by that person. This Chapter shall not create liability on the part of Mendocino County, or any agent or employee of the County, for any damages that result from any discharger's reliance on this Chapter or any administrative decision in compliance with this Chapter.

**Section 4.** Section 070 of Chapter 30 of Title 16 of the Mendocino County Code is created to read as follows:

**Sec. 16.30.070 - Requirements for reducing pollutants in storm water.**

- A. RESPONSIBILITY TO IMPLEMENT BEST MANAGEMENT PRACTICES. Notwithstanding the presence or absence of requirements promulgated in compliance with Section 16.30.090 (A) and Section 16.30.090 (B), any person engaged in activities or operations, or owning facilities or property anywhere in the County which will or may result in pollutants entering storm drainage systems, or waters of the U.S. shall implement BMPs to the *maximum extent practicable to prevent and reduce the pollutants*.
  - 1. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the storm drainage system or waters of the U.S.

2. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.
  3. Best Management Practices required by the County can be obtained at the Planning and Building Services Department, Department of Transportation, or the County Water Agency.
- B. Any person performing construction and/or grading work anywhere in the County shall implement appropriate Best Management Practices to prevent the discharge of debris, contaminants or construction waste, from the grading or construction site, or from grading or construction materials, tools and equipment, from entering into the storm drainage system. Best Management Practices as appropriate for each project, shall include but not be limited to the use of the following:
1. Scheduling construction activity
  2. Preservation of natural features, vegetation and soil
  3. Drainage swales or lined ditches to control stormwater flow
  4. Mulching or hydroseeding to stabilize disturbed soils
  5. Erosion control to protect slopes
  6. Protection of storm drain inlets (gravel bags or catch basin inserts)
  7. Perimeter sediment control (perimeter silt fence, fiber rolls)
  8. Sediment trap or sediment basin to retain sediment on site
  9. Stabilized construction exits
  10. Wind erosion control
  11. Other soil loss BMP acceptable to the enforcing agency
  12. Material handling and waste management
  13. Building materials stockpile management
  14. Management of washout areas (concrete, paints, stucco, etc.)
  15. Control of vehicle/equipment fueling to contractor's staging area
  16. Vehicle and equipment cleaning performed off site



17. Spill prevention and control
  18. Other housekeeping BMP acceptable to the enforcing agency
- C. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of the permit. Proof of compliance with the permit may be required in a form acceptable to the County as a condition of a subdivision map, site plan, building permit, encroachment permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.
- D. If the County discovers that a person has failed to implement BMPs in violation of this Chapter, such person may be required to obtain from the County a Special Erosion Control Permit, or other similar written approval of a corrective action plan, and shall allow the County to make any inspections it deems necessary to ensure that the person has complied with this Chapter. Prior to commencing work that may require the implementation of BMPs pursuant to this Chapter, any person may apply to the Department of Planning and Building Services for a Special Erosion Control Permit in order to ensure they are taking appropriate action.

**Section 5.** Section 120 of Chapter 30 of Title 16 of the Mendocino County Code is created to read as follows:

**Sec. 16.30.120 - Requirement to monitor and analyze.**

The County may require by written notice that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or non-stormwater discharges to the storm drainage system or watercourses, to undertake at that person's expense any monitoring and analyses and furnish reports to the County as deemed necessary to determine compliance with this Chapter.

**Section 6.** Section 140 of Chapter 30 of Title 16 of the Mendocino County Code is created to read as follows:

**Sec. 16.30.140 - Inspection and monitoring.**

- A. **AUTHORITY TO INSPECT.** Whenever necessary to make an inspection to enforce any provision of this Chapter, or whenever the County has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Chapter, the County may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the County is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

- B. AUTHORITY TO SAMPLE, ESTABLISH SAMPLING DEVICES, AND TEST. During any inspection in compliance with this Chapter, the County may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

**Section 7.** Section 160 of Chapter 30 of Title 16 of the Mendocino County Code is created to read as follows:

**Sec. 16.30.160 - Enforcement—Violations.**

- A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. Failure to comply with this Chapter, including the failure to implement a corrective action plan, shall be punishable by fines not to exceed one thousand dollars (\$1,000.00) per violation.
- B. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare and shall constitute a public nuisance and a misdemeanor and shall be subject to enforcement in accordance with Chapter 8.75 "Uniform Nuisance and Abatement Procedure" of the Mendocino County Code.
- C. Any person who violates any provision of this Chapter or any provision of any requirement issued in compliance with this Chapter may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Section shall also include written notice to the violator of this potential liability.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

\_\_\_\_\_  
JOHN HASCHAK, Chair  
Mendocino County Board of Supervisors

\_\_\_\_\_  
Deputy

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS,

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

County Counsel

BY: CARMEL J. ANGELO  
Clerk of the Board

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Deputy