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DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: JANUARY 12, 2024
FROM: THE PLANNING AND BUILDING SERVICES DEPARTMENT
SUBJECT: DEPARTMENT ANALYSIS OF THE HAZARDOUS VEGETATION ORDINANCE

PURPOSE

The Department of Planning and Building Services ("Department") has prepared this Memorandum regarding the current Hazardous Vegetation, Combustible Material, Rubbish, and Weeds Ordinance ("Ordinance"). This memorandum is intended to provide the Mendocino County Board of Supervisors ("Board") and the community with an overall cost-benefit analysis of the current ordinance, demonstrate likely time and costs to carry out regulatory enforcement of said ordinance through the County's current administrative processes, and the likely barriers it will face to implement the enforcement of the ordinance. The Department is presenting this analysis from the perspective of an expert in regulatory administration and enforcement of county ordinances. The Department hopes this analysis will help the Board move forward with informed decision-making as it relates to this ordinance and with consideration to the County's current available financial and staffing resources.

HISTORY OF COUNTY ORDINANCE NO. 4485

This Mendocino County Code ("MCC") Chapter 8.77 titled Hazardous Vegetation, Combustible Material, Rubbish, and Weeds, was originally adopted as an "intentionally broad framework" with an expectation set by the Board that there would be additional modifications to the ordinance, identification of dedicated resources, and/or Board direction committed to a multistep process developing this as a functional enforcement tool to reduce fire hazards in the County. Unfortunately, there were no identified funding sources during the subsequent Fiscal Year 2021/22 budget discussions, and without funding, there were no additional meetings to develop an implementation strategy. The Department believes the Third District Supervisor summarized it best at the first of two first readings of the Ordinance during the December 15th, 2020, Board meeting:

Video Recording @5:15:10 Supervisor Haschak – "So it seems to me like we have this, we have this ordinance proposal before us and it's the question is whether we want to go ahead with moving forward with the ordinance and not knowing the scope of funding and everything that's involved with it and with the risk of creating an ordinance without funding and without, you know, the appropriate enforcement or do we just think it's a good idea and move forward, I personally am ready to, to move forward with it and hope that we can you know find the funding to add that's appropriate for the level of enforcement that we want to create in this County because I do think that it is a critical area of concern for everyone living in this county."

During the second first reading of the Ordinance at the February 9th, 2021, Board meeting, Deputy County Counsel Michael Makdisi restated the intent of the Ordinance as follows:

Video recording @1:29:58 Deputy County Counsel Makdisi – "In December, when we discussed this on the 15th, part of the discussion was about the availability of resources, and It's worth noting again that this law was designed to provide the basic structure with knowledge that right now that no resources have been currently allocated to enforce this law. The ability to carry out this law will depend in part on either a priority setting by the board or an allocation of resources for the purposes of enforcing the law."

Staff Recommendation: Determine the available resources to fund the administrative functions of enforcing this Ordinance. The Department believes that grant(s) obtained by community organizations for the purposes of hazardous vegetation abatement can only cover the cost of physically abating the hazardous vegetation, and not the cost of County personnel, including but not limited to County Counsel, Code Enforcement, and the Building Division, or any other department or

division determined by the County to be able to carry out this enforcement. Perhaps there are other grants or resources which can offset the costs incurred by the County while performing the necessary administrative functions associated with enforcing the ordinance.

PRIMARY AUTHORITY OVER FIRES AND FIRE PROTECTION

Before detailing some of the modifications to be considered in the Ordinance itself, the Department wishes to clarify the broad responsibilities of Fire Jurisdictions in the County as it understands them. It is the Department's belief that the Ordinance is a secondary method to address fire hazards in the County. The primary method of enforcement lies with the experts (fire professionals) who are authorized to enforce the California Health and Safety Code. The Department believes the correct code section that establishes authority is as follows:

CALIFORNIA HEALTH AND SAFETY CODE – HSC - DIVISION 12. FIRES AND FIRE PROTECTION [13000 - 14959] PART 2.7. FIRE PROTECTION DISTRICT LAW OF 1987 [13800 - 13970] CHAPTER 5. General Powers and Duties [13860 - 13879]

13870.

- “(a) Notwithstanding any other provision of law, a district board or its authorized representative may issue a written order to correct or eliminate a fire hazard or life hazard.*
- (b) Any person who has been ordered to immediately correct or eliminate a fire hazard or life hazard pursuant to subdivision (a) and who believes that strict compliance with the order would cause undue hardship may, within 10 days, present a written request to the district board requesting a hearing on and a review of the order. The request shall state the reasons for making the request.*
- (c) Within 30 days of the receipt of a written request pursuant to subdivision (b), the district board or its authorized representative shall hold a hearing. The board may modify, vacate, or affirm the order. (Repealed and added by Stats. 1987, Ch. 1013, Sec. 11.)”*

13871.

- “(a) Any citation issued by a district for violation of a fire prevention code, or a district ordinance may be processed pursuant to subdivision (d) of Section 17 of the Penal Code.*
- (b) Every person who fails or refuses to correct or eliminate a fire or life hazard after written order of a district board or its authorized representative is guilty of a misdemeanor.*
- (c) Every person who falsely personates a member of a district board or an officer or employee of a district is guilty of a misdemeanor.*
- (d) Every misdemeanor is punishable pursuant to Section 19 of the Penal Code. (Repealed and added by Stats. 1987, Ch. 1013, Sec. 11.)”*

Staff Recommendation: It may be wise to consider a strategy to provide knowledge, assistance, and/or resources to the local Fire Protection Districts in how to perform civil regulatory enforcement and the associated due process, rather than the County being the lead agency in these cases.

THE COUNTY BUILDING OFFICIAL AS THE PRIMARY AUTHORITY

The Ordinance (MCC Sec. 8.77.030) states:

“It is a public nuisance for any person owning, leasing, occupying, or having charge of any property within the County to maintain such property in such a manner that contributes to the existence of any Combustible Material or Rubbish, Hazardous Vegetation, or Weeds, which constitutes a fire hazard, as determined by the County Building Official, or authorized designee.”

The County Building Official is designated as the primary authority as stated above. However, neither the California Building Code, nor the California Fire Code (as adopted by the Mendocino County Board of Supervisors in MCC Sec. 18.04.025) support the County Building Official as the County wide authority. The Building Official would be the authority in areas NOT located in the jurisdiction of a fire district (as stated in MCC Sec. 18.04.060). Which is a relatively small portion of the County due to the existence of the 20+ Fire Districts.

Section 701A.5 of the California Building Code states:

“Prior to building permit final approval, the property shall be in compliance with the vegetation management requirements prescribed in California Fire Code Section 4906, including California Public Resources Code 4291, California Code of Regulations Title 14 Division 1.5 Chapter 7 Subchapter 3 Section 1299, California Government Code Section 51182, California Code of Regulations Title 19 Division 1 Chapter 7 Subchapter 1 Section 3.07.”

The Department believes the two code sections above can be best summarized by stating that the Building Official has regulatory authority for the potential fire hazards associated with permitted structures, structures in the permitting process, or structures subject to the permitting process. This would not include fire risks associated with vacant land or open space. There are several sections of the California Health and Safety Code which may be worth considering:

Firstly, Section 13869.7 (primarily related to establishing building standards relating to fire and panic safety that are more stringent to those adopted by the State) states:

- “(h)(1) A city, county, or city and county that ratifies an ordinance relating to fire and safety pursuant to this section shall delegate the enforcement of the ordinance to either of the following:*
(A) The chief of the fire protection district that adopted the ordinance, or his or her authorized representative.
(B) The chief building official of the city, county, or city and county, or his or her authorized representative.”

It is worth noting that Chapter 18.04.060 of the MCC gives the definition of FIRE CHIEF as follows:

“FIRE CHIEF: The chief officer of the fire department serving the jurisdiction, or a duly authorized representative; areas not located in the jurisdiction of a fire district shall be under the authority of the Building Official.”

The Department again believes these code sections clearly and reasonably state the primary authority is appropriately designated to the Fire Protection District, and in the absence of such would fall to the Building Official.

Secondly, Section 13146 of the California Health and Safety Code states:

- “(a) The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:*
(1) The city, county, or city and county with jurisdiction in the area affected by the standard or regulation shall delegate the enforcement of the building standards relating to fire and panic safety and other regulations of the State Fire Marshal as they relate to R-3 dwellings, as described in Section 310.5 of Part 2 of the California Building Standards Code, to either of the following:
(A) The chief of the fire authority of the city, county, or city and county, or the chief's authorized representative.
(B) The chief building official of the city, county, or city and county, or the official's authorized representative.”

Thirdly, Section 14880 of the California Health and Safety Code states:

“Whenever weeds are growing on any street, sidewalk, or on private property in any county, the board of supervisors, by resolution, may declare the weeds a public nuisance.”

Fourthly, Section 14890 of the California Health and Safety Code states:

- “The board of supervisors shall designate the person to give notice to destroy weeds. This may be any one of the following:*
(a) The county agricultural commissioner
(b) The county forester
(c) The county board of forestry
(d) Any other officer, board, or commission”

Finally, Section 14930 of the California Health and Safety Code states:

“The board of supervisors may, by ordinance, compel the owner, lessee, or occupant of buildings, grounds, or lots in the county, to remove dirt, rubbish, weeds, or other rank growths from such property and adjacent sidewalks. If the owner, lessee, or occupant defaults, after notice prescribed by such ordinance, the board may authorize the removal or destruction of the dirt, rubbish, weeds, or rank growths at his expense by a county officer. The board may, by ordinance, prescribe a procedure for such removal or destruction and make the expense a lien upon the real property in accordance with Section 25845 of the Government Code.”

In practice, the Building Official position is not a subject matter expert as required by the Ordinance. The Ordinance states:

“MCC Sec. 8.77.020(A.) “Hazardous Vegetation” means vegetation that is flammable and endangers the public

safety by creating a fire hazard including, but not limited to, seasonal and recurrent weeds, stubble, brush, dry leaves or needles, plants known by fire professionals to be highly flammable, tumbleweeds and dead trees.”

“MCC Sec. 8.77.030 - The County Building Official, or authorized designee, may base their declaration of nuisance on one (1) or more factors, including but not limited to the existence of a violation of any applicable regulation or rule designed to reduce the risk of fire by addressing the management of vegetation, rubbish or other material.”

Though the Building Official position requires substantial education requirements, including but not limited to fire prevention and safety as it pertains to structures, the Department does not believe that the course of study would sufficiently educate that position in the applicable fire regulations required to make a defensible determination as described above.

Therefore, it is reasonable to suggest that the fire jurisdictions responsible for properties subject to enforcement would provide that service, or at a minimum, if the County were conducting enforcement actions, the responsible fire jurisdiction would need to provide a determination of Hazardous Vegetation, or otherwise. With 20+ independent fire districts, there may be challenges to having reasonable consistency in the determinations provided to the County.

Staff Recommendation: Adopt, Create and Fund a County Deputy Fire Marshal Position
Approx. Annual Cost \$250,000. Funding source: Possibly grant funded, or fee based.

It is the Department's belief that a County Fire Marshal position would provide numerous benefits to the County, including but not limited to unifying the efforts of the fire jurisdictions, making critical determinations such as fire related nuisances, emergency response efforts, investigations, and providing technical analysis or review.

THE COST OF ADMINISTRATION AND ENFORCEMENT

The enforcement tools of the Ordinance are as follows:

1.) Administrative Abatement

MCC Sec. 8.77.050(B.) Administrative Abatement. This Chapter may be enforced by use of the provisions of Chapter 8.75, which provides for the County's nuisance abatement procedures. The steps associated with that process, and the time approximations and approximate average cost, are as follows:

MCC Sec. 8.75.080 - Administrative Abatement.

(A) After a public nuisance is declared, the Enforcement Officer may issue a Notice and Order to Abate and serve such Notice pursuant to Section 8.75.090.

Investigation, determination, and issuance of the Notice:

APPROX. TIME: 1-hour administrative time (intake, pre investigation etc.), 4 hours prep time.	5 HOURS
APPROX. COST: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$424.60

(B) The owner or occupant may appeal the Notice and Order to Abate and the determination of the Enforcement Officer as specified in the Notice and Order to Abate. If the owner or occupant appeals the Notice and Order to Abate and declaration of public nuisance, then the provisions in Sections 8.75.100 through 8.75.140 shall apply.

The appeals process, including hearing(s):

APPROX. TIME - COUNTY COUNSEL: 9 hours for Deputy County Counsel time, plus 9 hours County Counsel support.	18 HOURS
APPROX. COST - COUNTY COUNSEL: Billed hourly rate for Deputy County Counsel IV of \$172.97, PLUS approximate weighted hourly rate for Legal Services Supervisor of \$80.00, PLUS fee of \$700.00 for Administrative Hearing Officer.	\$2,976.73

APPROX. TIME – CODE ENFORCEMENT: Includes prehearing prep time plus time spent at	13 HOURS
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hearing.	
APPROX COST – CODE ENFORCEMENT: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$1,103.96

(C) Abatement by County: If the Owner or Occupant has not abated the violations pursuant to the Notice and Order to Abate and has not filed an appeal within the time prescribed, the Enforcement Officer, his or her department, or other authorized designee may cause to be done whatever work is necessary to abate the public nuisance. If necessary, the Enforcement Officer, or authorized designee, may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of inspecting the property to determine if the nuisance remains and also for undertaking the work to abate the nuisance if the nuisance had not already been abated.

The cost of obtaining an inspection warrant, noticing the inspection warrant, obtaining entry to perform inspections and/or abatement, and return of warrant:

APPROX. TIME: Includes prep time, working with County Counsel, seeking Court approval, noticing, posting and inspection/abatement time.	10 HOURS
APPROX. COST: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$849.20

(D) All costs of abatement incurred by the County may be recovered pursuant to the procedures set forth in Sections 8.75.150 — 8.75.200.

Cost of attempted recovery if unsuccessful:

APPROX. TIME – COUNTY COUNSEL: Including hours for Deputy County Counsel IV and County Counsel Support.	4-8 HOURS
APPROX. COST – COUNTY COUNSEL: Billed hourly rate for Deputy County Counsel IV of \$172.97, PLUS approximate weighted hourly rate for Legal Services Supervisor of \$80.00.	\$1,011.88 - \$2,023.76
APPROX. TIME – CODE ENFORCEMENT: 2 hours for abatement lien as special assessment, plus 2 hours if processing for litigation.	2-4 HOURS
APPROX. COST – CODE ENFORCEMENT: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$169.84 - \$339.68

2.) Citations

MCC Sec. 8.77.050(C.) - Civil Penalty. This Chapter may be enforced by use of the provisions in Chapter 1.08, which provide the procedures to issue administrative citations and penalties, if a violation is found under this section, and pursuant to the following provisions. The steps associated with that process, and the time allowance and approximate average cost, are as follows:

MCC Sec. 1.08.060(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.

The investigation, determination, and issuance of the citation:

APPROX. TIME: Including general investigation, determination, issuance, administrative tasks such as mailing, etc.	5 HOURS (MINIMUM)
APPROX. COST: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$424.60 (MINIMUM)

MCC Sec. 1.08.060(J.) The administrative penalty shall become effective immediately upon service of the Administrative Citation. Failure to correct a violation within twenty-four (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.

Each additional citation:

APPROX. TIME: Including preparation, posting and administrative processing.	1.5 HOURS (MINIMUM)
APPROX. COST: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$127.38 (MINIMUM)

MCC Sec. 1.08.090(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.

The appeals process including the hearing(s):

APPROX. TIME - COUNTY COUNSEL: 9 hours for Deputy County Counsel time, plus 9 hours County Counsel support.	18 HOURS
APPROX. COST - COUNTY COUNSEL: Billed hourly rate for Deputy County Counsel IV of \$172.97, PLUS approximate weighted hourly rate for Legal Services Supervisor of \$80.00, PLUS fee of \$700.00 for Administrative Hearing Officer.	\$2,976.73

APPROX. TIME – CODE ENFORCEMENT: Includes prehearing prep time plus time spent at hearing.	13 HOURS
APPROX COST – CODE ENFORCEMENT: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$1,103.96

MCC Sec. 1.08.150 - 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.

Cost of attempted recovery if unsuccessful:

APPROX. TIME – COUNTY COUNSEL: Including hours for Deputy County Counsel IV and County Counsel Support.	4-8 HOURS
APPROX. COST – COUNTY COUNSEL: Billed hourly rate for Deputy County Counsel IV of \$172.97, PLUS approximate weighted hourly rate for Legal Services Supervisor of \$80.00.	\$1,011.88 - \$2,023.76

APPROX. TIME – CODE ENFORCEMENT: 2 hours for abatement lien as special assessment, plus 2 hours if processing for litigation.	2-4 HOURS
APPROX. COST – CODE ENFORCEMENT: Based on an hourly weighted rate for a Code Enforcement Officer II Step 5 of \$84.92.	\$169.84 - \$339.68

The total potential cost for each individual abatement could therefore be as much as approximately \$15,000.00. This total does NOT include the cost of the actual physical abatement itself.

It is important to note that there a number of intangible costs that have not been included in the above estimates, such as vehicle use and mileage, as well as tangible costs such as noticing property owners via USPS Certified Mail (approximately \$5.00 per mailing).

It is also important to note the distinction between billing and collecting when referring to “attempted recovery”. The more run down the property, the more difficult it may be to collect recovery costs from the property owner, e.g., if the cost outweighs the benefit, the property owner has no more motivation to invest.

REVISIONS TO THE ORDINANCE

The Department has identified the following opportunities for clarification in the following sections of the ordinance:

Definitions section of 8.77.020 concerns:

Thresholds: Clearly identifying and defining the thresholds for certain subjective terms and concepts, such as the size or amount of material, or whether the location of said material would “endanger public safety” or “[create] a fire hazard” (as noted in the definitions section) is highly recommended. This would ensure that the community, local organizations and the County are all unified in their expectations for this ordinance, including the expectation that nuisances are consistently investigated and enforced, if determined . This will help avoid misuse of staffing resources based on a subjective opinion of the definitions or undefined terms already established within this ordinance.

Dead Trees: In the Coastal Zone, dead trees are considered viable habitats for certain protected species per the California Coastal Commission (the state authority that oversees the enforcement of the Coastal Act along the state’s 1100 miles of coastline), and their removal requires approval from the local jurisdiction if determined to be mapped near an Environmentally Sensitive Habitat Area (ESHA) and/or wetland. Additionally, the County has located within its boundaries approximately 2,000 acres of the last 10,000 acres of Pygmy Forest left in the world. Vegetation within the Pygmy Forest is located throughout most zoning types mapped in the County and the vegetation itself will likely be viewed as hazardous by the public based on appearance alone. This is a highly protected forest under the State’s authority and may likely require exemption for any proposed removal or disturbance throughout the County.

Private vs Public Property: It is important to note that according to California Health and Safety Code 14880 there is no distinction between private property and publicly owned (such as County-owned) property. Along with private property owners, the County would also be expected to adhere to the terms of the ordinance. This may impose more cost on the County, as it would be responsible for making sure that all County-maintained roads, sidewalks and buildings are free of hazardous vegetation. This would certainly be challenging for any County department to enforce, as it may result in a potential conflict. An example of this conflict is the complaints received for hazardous vegetation in Bower Park in Gualala (a County-owned property), which was never funded or resourced to clean up, until a recent grant opportunity was provided by the State.

Declaration of Nuisance section 8.77.030 concerns:

This section refers to: “any person owning, leasing, occupying or having charge of any property within the County.” From a regulatory enforcement perspective, it is reasonable to place responsibility onto the property owner because evidence showing legal interest can be obtained through County records (e.g., tax assessor information, deed information etc.). However, if the nuisance is determined to be caused by (for example) an occupant, what authority does the Department, or any other non-law enforcement personnel, have to require the “responsible party” to provide their identification in order to properly notice or cite them to carry out enforcement of this ordinance? The Department foresees this being a regular conflict when identification is required. Civilian/Non-Sworn County employees are not entitled to the same information as law enforcement personnel.

This section also refers to: “The County Building Official, or authorized designee, may base their declaration of nuisance on one (1) or more factors, including but not limited to the existence of a violation of any applicable regulation or rule designed to reduce the risk of fire by addressing the management of vegetation, rubbish or other material.” This is a very vague and subjective portion of the ordinance that has no threshold of evidence. For example, you could have approximately one kitchen sized trash bag worth of “rubbish” strewn across a one-acre parcel which may result in a \$1,000.00 per day violation.

Corrective Actions section 8.77.040 concerns:

This section discusses the corrective actions to abate the nuisance but does not address the thresholds of how it is adequately satisfied, and what evidence the regulatory authority has to prove that it has not been satisfied. For example, under the Building Code, the circumstances when a building permit is required, and what is exempt from these requirements, is clearly codified. This is how the Department is able to conduct enforcement, as there is a clear threshold with definitions, and would be difficult for the threshold to be contested by the responsible party.

“Defensible Space” is not defined or specified clearly enough that a responsible party would understand what they must do to satisfy the violation.

Enforcement section 8.77.050 concerns:

The comments below are considerations within this section, not specifically things that should be amended or modified within this proposed ordinance amendment. Under the Administrative Abatement portion of this section, it states: “This chapter *may* [emphasis added] be enforced by use of the provision of Chapter 8.75”, which provides for the County’s nuisance abatement procedure. It is important to note that this is a *may*, not a *shall*.

Abatement processes are very costly and time consuming and the County will have a responsibility to articulate extreme detail when it determines that an abatement is warranted. Cost recovery is not absolute, so it is wise for the County to have the discretion of when and in what circumstances it should carry out these abatements. If the intention of amending this ordinance is to carry out administrative abatements, the County must be prepared for the following; the public’s expectation of County action will understandably increase, complaint volume will increase, and the County will need to resource the Department accordingly.

The Civil Penalty portion of this section also states, “This Chapter *may* [emphasis added] be enforced by use of the provisions in Chapter 1.08,” which is important to contemplate. Additionally, it is important to consider that the administrative appeal process noted under MCC Chapter 1.08 is a very costly process and the penalty amount (although one of our highest penalty amounts codified) should not be seen as a cost recovery solution. The County often spends more money on staffing resources than the amounts of citations due to compliance being ultimately more valuable than the citation. Administrative Citations are deterrents or leverage tools rather than cost recovery mechanisms. Furthermore, each additional citation issued generates its own new opportunity to appeal. This means four citations potentially equals four appeal hearings, with all the associated costs.

ADDITIONAL CONSIDERATIONS MOVING FORWARD

If the Board chooses to proceed with this ordinance and implementation, the Board may consider utilizing the Code Enforcement Division to enforce the ordinance under the “Code Enforcement as a Service Model” program, currently being piloted with other County Departments. For instance, when an Memorandum of Understanding is developed between a County Deputy Fire Marshal and Code Enforcement, or a Fire District and Code Enforcement, and these jurisdictional authorities determine that a violation exists, and compliance efforts have not been effective in resolving the hazard, then Administrative Citations and Notices of Order to Abate (NOTAs) can be issued via Code Enforcement as a last resort if the conditions are determined to be severe enough that those mechanisms are necessary.