

ORDINANCE NO. _____

**ORDINANCE CREATING CHAPTER 1.08 OF THE MENDOCINO COUNTY CODE
ESTABLISHING A PROCEDURE TO ISSUE ADMINISTRATIVE CITATIONS AND IMPOSE
ADMINISTRATIVE PENALTIES FOR ANY VIOLATION OF THE MENDOCINO COUNTY
CODE**

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

Section 1. Chapter 08 of Title 1 of the Mendocino County Code is created 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.

1.08.020. Citation.

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

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 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.

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. 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 state or federal law provide an exclusive remedy.

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 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.

1.08.060. Administrative Penalty; Amounts.

- A. Any Responsible Party violating any provision of 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 and shall be subject to Citation.
- 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 \$100.00 for a first violation;
 - 2. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year from the date of the first violation;
 - 3. A fine not exceeding \$500.00 for each additional violation of the same Code provision within one year from the date of the second violation.
- F. A violation of any local building or safety code, the amount of the fine for each violation shall be:
 - 1. A fine not exceeding \$100.00 for a first violation;
 - 2. A fine not exceeding \$500.00 for a second violation of the same Code provision within one year from the date of the first violation;
 - 3. A fine not exceeding \$1,000.00 for each additional violation of the same Code provision within one year from the date of the second violation.
- G. If a Responsible Party fails to correct any violation after the Administrative Citation is served, the administrative penalty shall become effective and due immediately.
- H. The administrative penalty, or any portion thereof, for a violation which has become effective may be waived by the Enforcement Officer if, in his or her sole discretion, the Responsible Party corrects the violation in accordance with conditions established by the Enforcement Officer.

1.08.070. Citation for Violation of the Code.

- A. Pursuant to Government Code section 53069.4(a)(2), 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, which shall not be less than thirty (30) days. 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. If the notice of violation takes the form of and is served in the same manner as an Administrative Citation, the proposed administrative penalty identified in such a form shall not become effective until the expiration of the time provided to correct the violation.

- B. Unless otherwise specified, the Enforcement Officer may issue an Administrative Citation without providing notice and time to cure. However, the Enforcement Officer, in his or her sole discretion, has the option to give notice and time to cure, and may choose to delay the effect of the administrative penalty until after such time.

- C. The Administrative Citation shall be issued on a form containing:
 - 1. The name and address of the Responsible Party and, if applicable;
 - 2. the date, approximate time, and address or definite description of the location where the violation was observed
 - 3. The Code sections or provisions violated and a description of the violation;
 - 4. Where applicable, the date the notice of violation was served on the Responsible Party and the time specified thereon to correct the violation;
 - 5. When applicable, a statement that the violation has not been corrected within the period of time designated in a notice of violation within which a Responsible Party may correct or abate the violation;
 - 6. The amount of the fine imposed by, or proposed to be imposed by the Citation;
 - 7. A statement explaining how, where, to whom, and within what number of days the penalty shall be paid;
 - 8. In the case of a continuing violation not subject to an immediate administrative penalty, or in any other case when the Enforcement Officer opts to delay the effect of the penalty until after a time to cure, the number of days provided to correct the violation, and if not corrected by that time then the proposed Administrative Citation and penalty shall become effective immediately with the understanding that any subsequent Administrative Citation would be considered a repeat violation subject to a higher penalty;

9. Identification of appeal rights, including the time within which the administrative Citation may be contested and how to contest the Citation;
 10. The signature of the Enforcement Officer issuing the Citation along with the date of issuance of the Citation, and if possible; and
- D. The Administrative Citation, and any required notice of violation in the form of an Administrative Citation or in any other form, shall be served upon the Responsible Party pursuant to Section 1.08.080.
 - E. Upon receipt of a Citation, the Responsible Party shall pay the amount of the fine to the issuing Department within thirty (30) days of the date of service of the Citation, or as otherwise indicated in the Citation. Alternatively, the Responsible Party may file a written request for appeal of the Citation pursuant to the provisions in this Chapter.
 - F. Payment of the fine shall not excuse or discharge the failure to correct 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.

1.08.080. Service Procedures.

An Administrative Citation shall be served on the Responsible Party by an Enforcement Officer in one of the following ways:

- A. Personal service; or
- B. Certified mail, postage prepaid with a return receipt requested. Simultaneously, the Citation may be sent by first class mail, postage prepaid with certificate of mailing requested. If the Citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the Citation sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus five days.
- C. Posting the Administrative Citation on any real property within the County in which the County 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. If service by mail fails, service by posting shall be deemed effective service as of the date of actual posting plus five days.

1.08.090. Procedure to Appeal an Administrative Citation.

- A. Within 10 days from the date of a properly served Citation, any recipient of the Citation may contest that he or she was responsible for causing or contributing to the cited Code violation.

- B. To appeal the Citation, the recipient must give notice to the Department issuing the Citation within 10 days from the date of service of the Citation 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. The notice of appeal shall be accompanied by either an advance deposit in the amount of the total administrative penalty or a completed hardship waiver application as described in Section 1.08.100.
- D. If the Board has established a hearing fee, either the hearing fee or a completed application for a hardship waiver as described in Section 1.08.100 shall also be provided along with the notice of Citation given to the Department.
- E. Any notice of appeal filed without providing the advance deposit, and payment of the hearing fee if applicable, or submittal of the hardship waiver application, as described in Section 1.08.100, shall be deemed incomplete.
- F. The Department receiving a timely and properly filed appeal, along with the hearing fee, if applicable, shall then cause the matter to be set for hearing by notifying the Hearing Officer directly or by requesting County Counsel to coordinate with the Hearing Officer.
- G. A hearing before a Hearing Officer shall be set for a date that is not less than ten (10) and not more than thirty (30) days from the date that the notice of appeal is filed.
- H. In accordance with the noticing provisions set forth in Section 1.08.080, either the Hearing Officer, or the County Counsel in cooperation with the Hearing Officer, 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.

1.08.100. Hardship Waiver.

- A. Any Responsible Party who intends to request a hearing to contest an Administrative Citation and who is financially unable to provide the advance deposit, or pay the hearing fee if applicable, as provided in Section 1.08.090, may file a request for a hardship waiver along with the notice of appeal.
- B. The requirement of depositing the full amount of the administrative penalty, or hearing fee if applicable, as described in Section 1.08.090 shall be stayed unless and until the director of the Department, or his or her authorized designee, makes a determination not to issue the hardship waiver.

- C. The director of the Department, or his or her authorized designee, may waive the requirement of and advance deposit, or hearing fee if applicable, if the Responsible Party receiving the Administrative Citation submits a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director of the Department, or his or her authorized designee, proof of the Responsible Party's actual financial inability to deposit with the County the full amount of the administrative penalty, or hearing fee if applicable.
- D. Financial inability can be established by showing that the applicant has qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as the programs identified in California Government Code Section 68632(a), or by showing that the applicant's monthly income is 125 percent or less of the current poverty guidelines, as explained in California Government Code Section 68632(b).
- E. If the director of the Department, or his her designee, determines not to issue a hardship waiver, the following shall apply:
 - 1. The director, or his or her designee, shall issue a written determination listing the reasons for the determination not to issue the hardship waiver;
 - 2. The written determination shall be mailed by first class mail, postage prepaid, with certificate of mailing requested, to the Responsible Party at the address identified on the Responsible Party's notice of appeal pursuant to Section 1.08.090, or at the Responsible Party's last known address;
 - 3. The Responsible Party shall remit the advance deposit, or hearing fee if applicable, to the Department within ten (10) days of the date of mailing of the written determination; and
 - 4. Failure by the Responsible Party to timely remit the advance deposit, or hearing fee if applicable, to the Department after mailing of the determination not to issue a hardship waiver shall be deemed a withdrawal of the request for appeal contesting the Administrative Citation pursuant to 1.08.090, and the provisions of the Citation shall be effective immediately, including any associated administrative penalty, which shall be due immediately.

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.

1.08.120. Hearing Procedure.

- A. At the prescribed time and place, the Hearing Officer shall consider relevant evidence from all parties as to whether the violation of the Code specified in the Citation occurred and whether the appellant caused or contributed to the violation of the Code on the date specified in the Citation.
- B. The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- C. 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. Personal information about any reporting party related to the violation(s) shall not be disclosed.
- D. The failure of any appellant of an Administrative Citation to appear at the scheduled hearing shall constitute a failure to exhaust administrative remedies.
- E. The Hearing Officer may continue the hearing and request additional information from the parties prior to issuing a written decision.

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, and shall state the reasons for that decision 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, then the fine amount identified in the Citation, or as otherwise adjusted by the Hearing Officer, shall be immediately collectable by the Department.
- C. If the Hearing Officer determines that the Administrative Citation should not be upheld, the Hearing Officer shall order the Citation dismissed, and the Department shall return the advance deposit, if such deposit was provided.
- 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.

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.

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.

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 Citations and all required notices are properly given or served pursuant to the provisions of this chapter, the failure to receive the Administrative Citation or any other notice shall not affect the validity of proceedings conducted herein.

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.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2016, 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

DAN GJERDE, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code section

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

25103, delivery of this document has
been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy