



MEMORANDUM

DATE: DECEMBER 8, 2020

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JOHN BURKES, CODE ENFORCEMENT
MICHAEL MAKDISI, DEPUTY COUNTY COUNSEL

RE: ORDINANCE AMENDING CHAPTERS 1.04, 1.08 AND 16.30 TO IMPROVE THE COUNTY'S ABILITY TO EFFICIENTLY AND EFFECTIVELY OBTAIN COMPLIANCE WITH THE COUNTY CODE AND PROVIDE NECESSARY DUE PROCESS.

BACKGROUND AND SUMMARY:

Since the County adopted the administrative citation ordinance embodied in Chapter 1.08, the Code Enforcement Division and the Office of County Counsel have monitored the County's ability to enforce the code, specifically with regards to the use of administrative penalties. During this time, staff identified specific areas that, if modified, would improve the County's ability to enforce the code and obtain compliance with violations, provide for a more practicable processes (including the administration of due), and bring the code into conformance with state law. The present proposal attempts to make many of these changes.

Of growing concern more recently, is that certain administrative penalties, including those related to cannabis and stormwater violations, are not having the desired impact. Penalties must be severe enough to either deter people from violating the law, or to create an incentive for them to quickly abate existing violations. Unfortunately, instead of acting as a deterrent, the penalties at this time, have done little to encourage compliance and do not provide for cost recovery of staff time. The proposed penalty increases will help ensure that the administrative penalty enforcement tool remains effective and viable to the County and community affected by a violation. While amending the code to incorporate these penalty changes, staff has included many of the suggested changes that have been identified over the past few years, especially in regards to the administrative processes.

In addition to increasing certain penalties, the key proposed changes include allowing for recording all notices of violation related to real property; requiring special permits to address erosion control violations; expanding scope of penalties to include non-codified ordinances; limiting duration of administrative penalties; amending the administrative citations procedures, including issuance, service, modification, and appeal process; providing clarification and direction as to the authority and the extent of such authority to enter into compliance plans, and modifying the hardship waiver provisions.

Overall, these changes are based on improving the County's ability to effectively and efficiently obtain code compliance. More specific descriptions of the proposed changes are detailed below.

SUMMARY OF PROPOSED CHANGES BY CHAPTER:

SECTION 1.04.130:

Section 1.04.130 would expand upon an existing code enforcement tool that allows for the recordation of a Notice of Violation (“NOV”) for certain violations. This new section would allow for the recordation of NOVs for any violation of the code, so long as it pertains to real property. Such violations would include violations of the County’s construction permitting ordinance (Chapter 18.70), the County’s Stormwater and Pollutions Prevention Ordinance (Chapter 16.30), as well as any violation associated with an unabated nuisance (See proposed Section 1.08.060(I)).

CHAPTER 1.08:

This chapter currently provides a system of imposing administrative penalties for violations of the Mendocino County Code. The proposed revisions aim to improve clarity and also update certain provisions to be consistent with current County practices and recent changes to state law. Key amendments include:

- Clarifying definition of “responsible party”
- Expanding scope of Chapter to include non-codified ordinances
- Clarifying what triggers administrative penalties, when they become effective, how they accrue, how they are calculated, and when they become due
- Limiting the duration of recurring penalties from a single citation to 90 days
- Increasing penalties for:
 - Building and safety code violations in accord with revised state law
 - Growing cannabis without proper authorization, with augmented penalties for related grading, building and tree removal violations
 - Violations of 10A.17
- Providing for the imposition of monetary penalties for maintaining a public nuisance
- Revising the authority, requirements and limits when rescinding or modifying citations and penalties
- Providing greater flexibility about what is a reasonable time to correct a violation
- Providing the immediate imposition of penalties, pursuant to recent state law, for violations related to illegal cannabis cultivation
- Clarifying and removing language to reflect current County practices
- Revising service procedures for a less wasteful and burdensome approach, including a greater emphasis on First Class mail; adding the ability to use alternative forms of service if agreed; and providing greater clarity regarding procedures and timing
- Extending the time to appeal citations
- Adding an additional screening process when processing appeals
- Removing the requirement to post a deposit or pay a fee when appealing
- Revising procedures for administering the hearings to reflect County practices and to provide greater flexibility and workability for staff, including extending the time to provide a hearing to “as soon as practicable”
- Revising, clarifying and augmenting the rules regarding interactions with the Hearing Officer to provide the Hearing Officer with a greater ability to prepare for and to be informed prior to the hearings, while also keeping all parties informed
- Allowing the County to recover costs of the Hearing Officer under certain conditions

- Providing a hardship waiver, as required by state law, with respect to the imposed penalties
- Adding authority for the Hearing Officer to request documents, set pre-hearing conferences, request assistance from County Counsel respecting notices and correspondence, and respecting the issuing of procedural orders
- Clarifying the hearing procedures, the appropriate scope of the hearings, the burden of proof, and the standard of proof.
- Clarifying the contents of administrative orders and expanding them to include all applicable and appropriate findings and determinations

CHAPTER 16.30:

Chapter 16.30 currently sets out the rules and procedures to address stormwater runoff pollution. The proposed revisions address penalties, procedure and scope. Key amendments include:

- Increasing the penalties up to \$1,000.00 per violation, and removing the designation of violations as infractions to allow for the higher administrative penalties
- Requiring a special permit and inspections to address erosion control violations
- Clarifying the scope and purpose of Best Management Practices to include runoff from an entire construction or grading site

Attachments:

1. Draft Ordinance
2. Chapter 1.08 red line
3. Chapter 16.30 red line