

ORDINANCE NO. 4470

URGENCY ORDINANCE OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA, TEMPORARILY SUSPENDING TIMELINES AND MODIFYING PROCEDURES RELATED TO ADMINISTRATIVE HEARINGS DURING THE COVID-19 PANDEMIC

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic; and

WHEREAS, the County of Mendocino Health Officer declared a local health emergency related to the COVID-19 on March 4, 2020; and

WHEREAS, the County of Mendocino Director of Emergency Services proclaimed the existence of a local emergency related to COVID-19 on March 4, 2020; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of Mendocino ratified the local emergency related to COVID-19 as proclaimed by the Chief Executive Officer/Director of Emergency Services and Ratifying the Existence of a local emergency as proclaimed by the Health Officer; and

WHEREAS, the Health Official of the County of Mendocino issued a shelter in place order on March 18, 2020, which has been revised and updated but persists today, along with other orders to protect the public's health through social distancing and hygiene protocols; and

WHEREAS, the Mendocino County Code presently contains processes for providing administrative hearings which does not account for the protocols necessary to adequately protect the public's health and safety during the COVID-19 pandemic while administering administrative hearings; and

WHEREAS, unless the current procedures allow flexibility for the purpose of protecting the public from the unnecessary spread of COVID-19, the current laws present an immediate threat to the public peace, health or safety as described in Government Code section 25123(d) for the reasons stated in the findings in Section 3, below; and

WHEREAS, there is an urgent need for the County of Mendocino to modify the procedural rules regarding administrative hearings during the COVID-19 pandemic to address the immediate threat to the public peace, health or safety that may occur in the absence of a realistically functional administrative hearing process;

NOW, THEREFORE, The Board of Supervisors of the County of Mendocino ordains as follows:

SECTION 1. The above recitals are true and correct, and are incorporated herein.

SECTION 2. Purpose.

In order to address the immediate threat to the public peace, health or safety, and to provide for realistically functional and practicable administrative hearing procedures while maintaining social distancing requirements, this ordinance temporarily amends certain timelines and procedures related to administrative hearings.

SECTION 3. Findings.

- a. The provision of administrative hearings under current County law does not account for the protocols necessary to ensure public safety during the COVID-19 pandemic.
- b. Certain administrative hearings identified in the Mendocino County Code currently either implicitly indicate that administrative hearings will occur in person or functionally require that they be in person for the purpose of exchanging evidence.
- c. In person hearings are difficult at best, and may be impossible to administer during the COVID-19 pandemic under the current social distancing orders.
- d. The current deadlines for the provision of administrative hearings diminishes the ability for the County to implement best practices to minimize the spread of COVID-19.
- e. The current deadline for the provision of administrative hearings may result in the failure to provide a hearing if minimum safeguards cannot be implemented within the current timelines.
- f. Failure to provide administrative hearings within the timeframe specified in the Mendocino County Code may give rise to unrest, may cause the public to lose faith in the functionality of the County government, and may cause a chilling effect on the part of County staff when considering whether to pursue the abatement of certain code violations if due process cannot be administered effectively and efficiently.
- g. If the County does not pursue code violations based on the lack of a realistic ability to provide due process, code violations may go unaddressed, which may increase the danger to the public's health, safety and welfare.
- h. During the local emergency related to COVID-19, flexibility in processing administrative hearings is needed to better protect the public's health and safety, and to ensure accessibility for all people participating in the hearings.

SECTION 4. Applicability.

This ordinance applies to the unincorporated areas of the County of Mendocino, from the Effective Date of this Ordinance until the local emergency related to COVID-19 ends, and shall apply to all pending and future matters that require an administrative hearing.

SECTION 5. Suspension of Timelines for Provision of Administrative Hearings.

- A. To the extent that the County of Mendocino prescribes that an administrative hearing be provided within a certain definite timeframe, such requirement is hereby suspended. This includes, but is not limited to, the suspension of:
 1. The thirty (30) day timeline specified in Mendocino County Code section 1.08.090(G); and
 2. The thirty (30) day timeline specified in Mendocino County Code section 8.75.110.
- B. For all timelines that are suspended as a result of this section, an administrative hearing shall be provided at the earliest practicable date in a manner that conforms to the social distancing orders applicable to the County of Mendocino and which takes into account those guidance's, recommendations, best practices or other protocols issued by any relevant public health agency for reducing the spread of COVID-19.
- C. This section shall not suspend any timeline prescribed by state or federal law which the County of Mendocino does not have the authority to modify.

SECTION 6. Modification of Hearing Procedures and Administration.

- a. All administrative hearings may be administered and conducted by means of video and/or teleconferencing, unless the County, hearing officer or hearing board determines that in-person hearings are safe and practicable or unless state or federal law requires hearings to be conducted in-person.
- b. The entity administering the logistics of an administrative hearing may establish the logistical procedures needed to successfully administer and conduct the hearing at issue by way of video or teleconferencing. Such logistics may include, but are not limited to,
 - a. Contacting the parties to determine their accessibility to video or teleconferencing,
 - b. Arranging a video or teleconference line for connecting remote locations, or
 - c. Setting up separate rooms at a single location, connecting them via video or teleconference, and then establishing protocols for exchanging physical evidence in real time.
- c. To facilitate the processing of physical evidence while using video or teleconferencing, a hearing officer or hearing board may issue any order(s) prior to the hearing, and may issue any order(s) during a hearing if the officer or board determines that such order is necessary to promote fairness or due process in light of all interests of all parties. Such order(s) may include, but are not limited to:
 - a. Changing or continuing the date of hearing;
 - b. Ordering pre-hearing conferences by video or teleconference to narrow the issues and determine what evidence needs to be exchanged prior to the hearing;
 - c. Establishing timelines for the exchange of evidence and/or ordering the mode of exchange.
- d. In the absence of any order by a hearing officer or hearing board, parties to an administrative hearing at which the use of video or teleconferencing is anticipated are encouraged to email or mail copies of the physical evidence they anticipate presenting at the hearing to both the opposing party as well as to either the hearing officer or hearing board.

SECTION 7. Severability.

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

SECTION 8. Effective date.

This ordinance shall take effect immediately as an urgency ordinance, and shall be applicable as of October 6, 2020, the date of approval of this ordinance. This is based on the Board of Supervisors finding that this ordinance is adopted in compliance with Government Code section 25123, that it is necessary for the protection of the public peace, health or safety.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 6th day of October, 2020, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Haschak, Gjerde, and Williams
NOES: None
ABSENT: None

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

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS, County Counsel

JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy