

## MONTEREY COUNTY PLANNING COMMISSION

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| <b>MEETING:</b> July 28, 2004 @ 10:10 a.m.   | <b>AGENDA NO.:</b> 5 |
| <b>SUBJECT:</b> Study Session on an ordinance amending Chapter 1.20 of the Monterey County Code relative to the enforcement of the Monterey County Code. (PLN040372) |                      |
| <b>DEPARTMENT:</b> Planning and Building Inspection  |                      |

### RECOMMENDATION:

It is recommended that:

1. The Planning Commission hold a study session on an ordinance amending Chapter 1.20 of the Monterey County Code relative to the enforcement of the Monterey County Code; and,
2. Provide comments to the Board of Supervisors.

### SUMMARY:

The Board directed an ordinance be prepared to update and improve the current code enforcement authority and tools in the County Code, specifically in the area of zoning, building, and grading and erosion control. The ordinance (attached) has been prepared and a public hearing before the Board has been set for August 24, 2004 at 10:00 a.m.

The attached ordinance will replace the current provisions for the enforcement of the County Code found in Title 1 of the County Code. These enhanced provisions will be able to be used independently or with other code enforcement provisions elsewhere in the County Code. While the ordinance will provide an improved set of enforcement tools, staffing levels will continue to be an issue.

### DISCUSSION:

See Attachment A.

### OTHER AGENCY INVOLVEMENT:

The ordinance was developed in consultation with the land use departments.

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Dale Ellis, AICP  
Assistant Director  
Planning and Building Inspection

Attachments: Attachment A (Summary of Ordinance and Issues)  
Attachment B (Proposed Ordinance)

**ATTACHMENT A**  
**(Summary of Ordinance and Issues)**

**Key points of the ordinance:**

Purpose and Intent: It is the express purpose and intent to provide a complete set of tools to use in enforcing the County Code and to reduce the complexity of the current processes. The ordinance will provide for both administrative and court based processes for resolution of violations. The result will be a more efficient process that can resolve violations more quickly than current processes. While the ordinance will provide a more efficient process, the County's limited staff resources for code enforcement will continue to hinder the overall enforcement effort.

Compliance Agreements: The ordinance will formalize the use of compliance agreements between the County and the responsible party. The agreement would establish the nature of the violation, the corrective action to be taken, the timeframe for correction, cost of enforcement to be paid and potential additional penalties should the compliance agreement be violated. While compliance agreements will not have the effect of a contract, they will represent the mutual understanding and agreement on the means of resolving a violation.

Notices of Violation: Notices of violation will continue to be used. The NOV is a recorded document that identifies the property, nature of violations and actions required to correct the violations. The NOV serves as constructive notice to the owner and other interested parties that violations exist on the property. While the NOV is not a lien, most lending institutions will not fund a loan against the property until the violation is resolved. This is a proven, effective tool particularly when owners are seeking to sell or refinance their property.

Prohibition on the Issuance of Permits: The prohibition on the issuance of permits will continue to be used. This prohibits County departments from issuing permits on property where there are known to be violations unless the permit is specifically required to correct the violation.

Infraction and Misdemeanor Citations: The alternative for citing violations as an infraction or misdemeanor and pursuing correction through the courts will continue to be a major tool in code enforcement. It has recently proven to be an effective tool in resolving simpler violations where the means to correct the violation readily exist but have not been followed. This avenue does require action by the courts.

Administrative Citations and Penalties: The significant new tool being proposed is an administrative citation and penalty process. This will allow the enforcing officer to cite a violation and assess financial penalties in addition to requiring correction of the violation, based on specific criteria. This process is fully internal to the County and would not require action through the court system.

Enforcement Appeals: The second major new tool is the establishment of enforcement appeals process utilizing a hearing officer. Under current processes, person charged with a violation wishing to appeal the determination of an enforcing officer have multiple, extensive appeal processes. While there is no intention to deprive any person of their appeal rights and due process, it is the intention to consolidate those multiple appeal avenues into a single process leading to a hearing before an independent hearing officer.

The hearing officer would be appointed by the County Administrative Officer. The thought is that the officer could be a contracted person from outside the County structure, a County employee or a panel in certain circumstances. Both the enforcing officer and the responsible party would present their case to the hearing officer. The hearing officer would render a decision either to confirm, reject or modify the action of the enforcing officer. The decision of the hearing officer would be final barring a subsequent court action.

Administrative and Summary Abatement: The ordinance proposes provisions for the County to take direct action to abate a violation. This process would allow the County, for example, to remove an illegal structure when normal efforts and due process to cause removal have not been successful (administrative abatement). The process would also allow the County to take immediate action to abate a violation when there is an imminent life safety hazard exists that requires immediate correction or elimination (summary abatement).

Code Enforcement Penalties Fund: The ordinance proposes a code enforcement penalties fund. Penalties and recovered costs of enforcement would be paid into this fund to defray the cost of the code enforcement program and to provide funds to pay for the cost of abatement of violations when the County takes direct action to abate a violation.

Restoration: The ordinance continues to require restoration of disturbed sites as part of the correction process. The ordinance does propose to modify the process for the approval of restoration plans to allow for more expeditious approval and implementation of restoration.

### **Policy Issues:**

Program Cost and Staffing: While the ordinance proposes the possibility of substantial penalties and cost recovery, there will be a significant cost for the enforcement program, the hearing officer, management of the hearing process, the hearing process itself and related activities. Budget reductions for FY 2004-05 reduced the staff available for code enforcement work. While the ordinance provides improved tools and processes, the loss of staff will adversely impact code enforcement efforts.

Administrative Citation and Penalties: Current code enforcement citation process goes directly through courts and a decision is made by a judge. The proposed administrative citation process will provide an alternative to that process. This is a significant change to the enforcement program.

Appeal process: The appeal process provides a single avenue for appeals to a hearing officer. The hearing officer's decision is final and binding. This is significantly different than current processes allowing multiple appeals through the Department head, Planning Commission and Board of Supervisors. While it will provide a more direct, less politicized process, it may be viewed as a reduction in due process.

Voluntary compliance: The enforcement program has relied heavily on a "voluntary compliance" approach that has allowed for violations to continue while the issue is addressed through a long and often unsure land use permitting process. The ordinance provides for tighter timelines and moves away from, but does not eliminate, the longer voluntary compliance approach. This is a fairly major change particularly for land use.

**ATTACHMENT B**

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

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
AMENDING CHAPTER 1.20 OF THE MONTEREY COUNTY CODE RELATIVE TO  
THE ENFORCEMENT OF THE MONTEREY COUNTY CODE**

County Counsel Synopsis

*This ordinance amends certain provisions of the Monterey County Code relative to the enforcement of the Monterey County Code. This ordinance establishes the provisions for enforcement of the Monterey County Code in addition to the other enforcement provisions throughout the Monterey County Code. The provisions of this ordinance may be used independently or in conjunction with other enforcement remedies. The ordinance provides the definitions, processes and alternative measures to enforce the Code. Included in these measures are both judicial and administrative remedies, compliance agreements, notice of violation, prohibition against issuance of permits, administrative citations, summary and administrative abatement, restoration, appeals and recovery of enforcement costs and penalties. The ordinance also establishes a Code Enforcement Penalties Fund that will be used to defray the County's cost for enforcement as well as funds certain enforcement activities.*

The Board of Supervisors of the County of Monterey ordains as follows:

**SECTION 1:** Chapter 1.20 of the Monterey County Code is hereby amended in its entirety to read:

**Chapter 1.20**

**ENFORCEMENT OF THE MONTEREY COUNTY CODE**

Sections:

- 1.20.01 Purpose and Findings
- 1.20.02 Applicability
- 1.20.03 Definitions
- 1.20.04 Authority and Powers
- 1.20.05 Violations
- 1.20.06 Judicial Remedies
- 1.20.07 Administrative Remedies
- 1.20.08 Compliance Agreements
- 1.20.09 Notice of Violation
- 1.20.10 Prohibition Against Issuance of Permits, Licenses and Entitlements
- 1.20.11 Administrative Citations
- 1.20.12 Summary Abatement

- 1.20.13 Administrative Abatement
- 1.20.14 Restoration
- 1.20.15 Administrative Enforcement Appeals
- 1.20.16 Recovery of Civil Penalties and Enforcement Costs
- 1.20.17 Code Enforcement Penalties Fund

### **1.20.01 PURPOSE AND FINDINGS**

- A. The Board of Supervisors finds:
  - 1. The enforcement of the Monterey County Code and applicable state codes throughout the County is an important public service.
  - 2. Code enforcement is vital to protection of the public's health, safety and quality of life.
  - 3. Enforcement depends upon clear and precise regulations that can be effectively applied by a range of administrative remedies as well as judicial proceedings.
  - 4. That a comprehensive code enforcement system that uses a combination of administrative and judicial remedies is critical to gain code compliance.
- B. The Board of Supervisors further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement.
- C. The Board of Supervisors finds that there is a need to establish an appeal process for the administrative decisions provided for in this Chapter through use of an independent, impartial hearing officer. It is the purpose and intent of the Board of Supervisors to afford due process of law to any person who is directly affected by an administrative action and to establish a forum to efficiently, expeditiously and fairly resolve issues raised in any administrative enforcement action.
- D. The Board of Supervisors finds:
  - 1. That the assessment and collection of civil penalties, abatement costs, administrative costs, reinspection fees and late fees assessed pursuant to administrative citations, administrative hearings, judicial orders and other appropriate code enforcement actions is an appropriate means defraying the County's cost for its code enforcement activities.
  - 2. The collection of civil penalties, costs and fees assessed for code enforcement violations is important in deterring future violations and maintaining the integrity of the county's code enforcement system.
- E. The Board of Supervisors finds that there is a need to create and maintain a funding source for the administration and operation of code enforcement activities in the County.

### **1.20.02 APPLICABILITY**

The provisions of this Chapter are applicable to the enforcement of all Monterey County Codes. The remedies provided herein may be used by an Enforcement Officer independently or in conjunction with other remedies that may exist within the Monterey County Code or in other law to abate a violation(s) of the Monterey County Code.

### **1.20.03 DEFINITIONS**

As used in this Chapter, the following shall have the following meanings:

- A. "Abate" or "Abatement" means any action taken by County of Monterey to remove or alleviate a nuisance.
- B. "Administrative enforcement order" means an order issued by an enforcement hearing officer after a hearing requiring a responsible person to correct violations, abate a public nuisance, pay civil penalties and administrative costs or take any other action as authorized or required by this code and applicable state codes.
- C. "Abatement notice" means a notice issued by an Enforcement Officer which requires a responsible person to abate a public nuisance.
- D. "Code enforcement performance bond" means a bond posted to ensure compliance with the Monterey County Code, applicable state codes, a judicial decree or administrative enforcement order.
- E. "Compliance Agreement" means a written agreement between the Enforcement Officer and the responsible person setting forth the mutually agreed to means and schedule by which a violation is to be abated.
- F. "Construction work" means the placing of construction materials in their permanent position, fastened in a permanent manner; actual work in excavation or grading, or the demolition or removal of an existing structure begun preparatory to rebuilding.
- G. "Diligent work" means work characterized by steady, earnest and energetic application of effort to complete any given project without lapse of necessary grading or building permits.
- H. "Disputing party" means any person responsible for alleged violations, interested or involved citizens who may have complained to the County about the alleged violations, crime victims and appropriate representatives from the County.
- I. "Enforcement case" means any complaint or case on file with the County that involves alleged violations of the Monterey County Code or applicable provisions of state law.
- J. "Enforcement Hearing Officer" means any person or panel appointed by the County Administrative Officer to preside over administrative enforcement appeals.
- K. "Enforcement Officer" means any Department Head as designated by Section A.10.1 of the Personnel Policy and Practices Resolution of the County of Monterey and their designees who are authorized to enforce the provisions of the Monterey County Code or applicable state codes.
- L. "Financial institution" means any person that holds a recorded mortgage, deed of trust, loan, note or similar instrument on a property.
- M. "Imminent life safety hazard" means any condition which creates a present and immediate danger to life, property, health or public safety.
- N. "Legal interest" means any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the County recorder.
- O. "Notice and order" means a document used to provide notice of Monterey County Code or applicable state code violations and orders a responsible person to correct the violations.
- P. "Notice of compliance" means a document by an Enforcement Officer stating that a property complies with the requirements listed in a notice of violation and that the responsible person or property owner has paid all fines, penalties and administrative costs of enforcement.
- Q. "Notice of violation" means a written notice prepared by an Enforcement Officer which informs a responsible person of code violations and directs compliance.
- R. "Nuisance abatement lien" means a lien recorded to collect outstanding civil penalties and administrative costs imposed as part of a code enforcement action.

- S. "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, limited liability company, business trust, organization or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.
- T. "Property owner" means the record owner of real property.
- U. "Public nuisance" means, for the purpose of this Chapter, the maintenance or use of property in the County in a manner that violates any provision of the Monterey County Code.
- V. "Referring agency" means the Board of Supervisors, a permanent County board or commission, County Enforcement Officer, the County administrative officer, the County Counsel or one of their designees.
- W. "Residential district" means any High Density Residential, Medium Density Residential Rural Density Residential or other zoning district established in the Monterey Code as a residential district.
- X. "Responsible person" means a person who an Enforcement Officer determines is responsible for causing or maintaining a violation of the Monterey County Code. The term "responsible person" includes but is not limited to a property owner, property manager, business manager, tenant, person with a legal interest in real property or person in possession of real property.
- Y. "Unreasonable state of partial construction" means it has been more than one year since actual construction has begun, and:
  1. The diligent work on construction of a project or required improvements has not been done on a consistent basis; or,
  2. The condition of the structure or the building site is detrimental to the public health, safety and welfare.
- Z. "Written" includes printed, typewritten, electronically mailed, photocopied, facsimile and any other item of writing as listed in California Evidence Code Section 250.

#### **1.20.04 AUTHORITY AND POWERS**

- A. All County Enforcement Officers designated in the Monterey County Code shall have the authority and powers necessary to gain compliance with the provisions of the Monterey County Code and applicable state codes for which they are responsible. These powers include the power to issue notices of violation and field citations, inspect public and private property and use whatever judicial and administrative remedies are available under the County code or applicable state codes.
- B. Pursuant to the provisions of Section 836.5 of the Penal Code of the State of California, each Department Head as designated by Section A.10.1 of the Personnel Policy and Practices Resolution of the County of Monterey and their designees are hereby designated and authorized to issue citations.
- C. Enforcement Officers are authorized to enter upon any property or premises to ascertain whether the provisions of the Monterey County Code or applicable state codes are being obeyed, and to make any examinations, inspections and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be conducted in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the Enforcement Officer may seek an administrative inspection warrant pursuant to the applicable procedures provided for in the California Code of Civil Procedure.

- D. Enforcement Officers are authorized to arrest without a warrant any person whenever the Enforcement Officer has reasonable cause to believe that the person has committed a violation of the County code or applicable state codes in his or her presence. Pursuant to Penal Code Section 836.5 the Enforcement Officer can only arrest a person by issuing a misdemeanor field citation or by affecting a citizen's arrest with the assistance of a peace officer.
- E. Whenever a notice is required to be given under the Monterey County Code for enforcement purposes, the notice shall be served by any of the following methods unless different provisions are otherwise specifically stated to apply:
  - (1) Personal service; or
  - (2) Regular mail; or
  - (3) Certified mail, postage prepaid, return receipt requested; or,
  - (4) Posting the notice conspicuously on or in front of the property.

If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. Service by certified or regular mail in the manner described above shall be effective on the date of mailing. The failure of any person with an interest in the property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this code.
- F. Whenever a document is recorded with the County Recorder as authorized or required by the Monterey County Code or applicable state codes, recordation shall provide constructive notice of the information contained in the recorded documents.

### **1.20.05 VIOLATIONS**

- A. Any structure in an unreasonable state of partial construction, set-up, erected, constructed, altered, enlarged, converted, moved, or maintained, contrary to the provisions of the Monterey County Code shall be, and the same is hereby declared to be, a violation of this Title, and a public nuisance.
- B. Any use of any land, structure, or premises, established, conducted, operated, or maintained contrary to the provisions of the Monterey County Code shall be, and the same is hereby declared to be, a violation of the Monterey County Code, and a public nuisance.
- C. It is prohibited to make any use of, or to allow any use of land or structure which is not permitted under by the Monterey County Code.
- D. It shall be unlawful for any person, firm or corporation whether as principal, agent, employee, landlord, tenant or otherwise to permit, allow or cause the set-up, alteration, erection, construction enlargement, conversion, or maintenance of any building or structure contrary to the provisions of the Monterey County Code and/or to permit, allow or cause the establishment, operation or maintenance of any use of the land, structure, or premise, which is contrary to the provisions of the Monterey County Code.
- E. Any person violating any provision of this Title, including the violation of any conditions of a discretionary permit, is guilty of a misdemeanor, unless, in the discretion of the Enforcement Officer it is charged as an infraction.
- F. It is prohibited for any person, firm or corporation to maintain, permit, or allow a violation or a public nuisance to exist upon any property, or premise, or for any person occupying or leasing the property or premises of another to maintain, permit or allow a public nuisance to exist thereon, after reasonable notice in writing from an Enforcement Officer, to remove, discontinue, or abate, the violation or public nuisance, has been served on the person, firm or corporation.



- G. It is prohibited for any person, firm or corporation to arrange or negotiate for the use of real property in violation of the provisions of the Monterey County Code.
- H. It is prohibited to continue work on any property after a stop work order, notice of violation or citation has been issued by an Enforcement Officer.
- I. Each day or portion of a day that any person violates or continues to violate this Title constitutes a separate offense and may be charged and punished separately without awaiting conviction on any prior offense.
- J. The conditions of any permit issued under the authority of the Monterey County Code immediately become effective upon initiation of the use authorized by the permit and such conditions must be strictly complied with. The violation of any condition imposed on any such permit shall constitute a violation of this the Monterey County Code and is declared to be a public nuisance.
- K. It is prohibited for any person to perform construction work between the hours of 7:00 p.m. to 7:00 a.m. within a residential district unless written approval has first been obtained from the Building Official.
- L. The accumulation or storage of nonworking appliances, junk, scrap metal, car parts, engines and similar items out of doors in a residential district for more than 30 days is declared to be a public nuisance.
- M. The accumulation or storage of trash and debris on any property is declared to be a public nuisance.
- N. The accumulation or storage of construction materials out of doors on any property in a residential district, unless an active building permit has been secured, is declared to be a public nuisance.

#### **1.20.06 JUDICIAL REMEDIES**

- A. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this code constitutes a misdemeanor.
- B. A misdemeanor under this code may, in the discretion of the district attorney, be charged and prosecuted as an infraction.
- C. Any person convicted of a misdemeanor under the provisions of this code, unless provision is otherwise herein made, shall be punishable by a fine of not more than \$1000.00 or by imprisonment in the County Jail for a period of not more than six months or by both fine and imprisonment.
- D. Any person convicted of an infraction under the provisions of this code, unless provision is otherwise herein made, shall be punishable by fine only as follows:
  - 1. first conviction, by a fine of not exceeding \$250.00;
  - 2. second conviction within a period of one year, by a fine of not exceeding \$500.00;
  - 3. each additional violation of the same ordinance within a period of one year, by a fine of not exceeding \$750.00.
- E. Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.
- F. In addition to any other remedy provided by this code, any provision of this code may be enforced by injunction issued by the Superior Court upon a suit brought by the County of Monterey. As part of a civil action filed to enforce provisions of this code, a court may assess a maximum civil penalty of \$100,000.00 per violation of the County code for each day during which any person commits, continues, allows or maintains a violation of any provision of this code.

- G. As part of any enforcement action taken by the County, the County has the authority to require a responsible person to post a performance bond to ensure compliance with the Monterey County Code, applicable state codes or any judicial action.
- H. Pursuant to California Penal Code Section 372, and California Code of Civil Procedure Section 731 the County has the authority to judicially abate public nuisances by filing criminal or civil nuisance actions.
- I. Pursuant to California Government Code Section 38773.7, upon the entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code Section 38773.5, a court may order the owner to pay triple the costs of the abatement. These costs shall not include conditions abated pursuant to Section 17980 of the California Health and Safety Code.

### **1.20.07 ADMINISTRATIVE REMEDIES**

Whenever the County, through one of its Enforcement Officers, determines that a violation of the Monterey County Code or applicable state code exists, the County may pursue any administrative remedy or combination of the administrative remedies outlined in Sections 1.20.07 through 1.20.14 of this Chapter. The administrative remedies included herein maybe used individually or cumulatively to abate violations of the Monterey County Code.

### **1.20.08 COMPLIANCE AGREEMENTS**

- A. The Enforcement Officer may enter into a compliance agreement with a responsible person as a means of abating a violation.
- B. The compliance agreement shall be in writing and shall include the following information:
  - 1. The name of the property's record owner;
  - 2. Street address;
  - 3. The code sections in violation;
  - 4. A description of the property's condition which violates the applicable codes;
  - 5. A list of necessary corrections to bring the property into compliance;
  - 6. A deadline or specific date to abate the violations; and,
  - 7. The cost of enforcement and the means by which the cost is to be paid.
- C. The time compliance agreement can be amended with the mutual agreement of the Enforcement Officer and responsible person.
- D. Failure of the responsible person to meet the terms and conditions of the compliance agreement in the time and manner established in the compliance agreement shall void the agreement.
- E. Should the compliance agreement be voided, the Enforcement Officer shall pursue such remedies as deemed necessary to abate the violation.
- F. A compliance agreement shall not exceed a period of six months.

### **1.20.09 NOTICE OF VIOLATION**

- A. Whenever an Enforcement Officer determines that a violation of the Monterey County Code or applicable state code pertaining to real property exists, the Enforcement Officer shall issue a notice of violation to a responsible person. The notice of violation shall include the following information:
  - 1. The name of the property's record owner;

2. Street address;
  3. The code sections in violation;
  4. A description of the property's condition which violates the applicable codes;
  5. A list of necessary corrections to bring the property into compliance;
  6. A deadline or specific date to correct the violations listed in the notice of violation;
  7. Reference to the potential consequences, specifically including recordation of a notice of violation and refusal to issue permits, should the property remain in violation after the expiration of the compliance deadline.
  8. A brief description of the procedure to appeal the notice of violation including time limitations.
- B. Once an Enforcement Officer has issued a notice of violation to a responsible person and the property remains in violation after the deadline established in the notice of violation, the Enforcement Officer may record a notice of violation with the Recorder's Office of Monterey County.
- C. The recorded notice of violation shall include the name of the property owner, the property's assessor's parcel number, the parcel's legal description, and a copy of the notice of violation.
- D. After a notice of violation has been recorded, and after the violations listed on the notice of violation have been corrected, and all administrative fees, fines, penalties and costs of enforcement have been paid, the Enforcement Officer shall record a notice of compliance. The recordation of the notice of compliance shall have the effect of canceling the recorded notice of violation.

#### **1.20.10 PROHIBITION AGAINST ISSUANCE OF PERMITS, LICENSES AND ENTITLEMENTS**

- A. No department, commission, or employee of the County of Monterey which is vested with the duty or authority to issue or approve permits, licenses or other entitlements shall issue or approve such permits, licenses or other entitlements nor determine a discretionary permit complete for any use of property where there is an outstanding violation of the County Code unless such permit, license or other entitlement is the, or part of the, administrative remedy for the violation.
- B. After recordation of a notice of violation by the Enforcement Officer, all departments, commissions, and public employees shall refuse to issue permits or licenses or entitlements involving the property except those necessary to abate the violation of the County Code, if such are obtainable.
- C. The provisions of this Section may be waived by the Enforcement Officer for remedial, protective, or preventative work needed to deal with an emergency situation.

#### **1.20.11 ADMINISTRATIVE CITATIONS**

- A. Any person violating any provision of the Monterey County Code or applicable state code may be issued an administrative citation by the Enforcement Officer. An administrative citation may be used in those cases where the nature and scope of the violation presents a significant threat to the public health, safety and welfare or a significant threat to the environment. Administrative citations may also be issued to responsible persons who are repeat violators.
- B. Administrative citations do not apply to violations of the Monterey County Code that pertain to building, plumbing, mechanical, electrical, or other similar structural or zoning

issues, unless a reasonable opportunity to correct or otherwise remedy the violation is first given to the violator. Ten days shall be deemed to be a reasonable period in the case of most such continuing violations; however, a longer period, in no case to exceed thirty days, shall be allowed at the discretion of the Enforcement Officer. Nothing in this section shall prevent the County from utilizing the administrative citation process for building, plumbing, mechanical, electrical, or other similar structural or zoning violations which are transient and noncontinuing in nature, or create an immediate danger to health or safety. Upon discovering any violation of the Monterey County Code or applicable state codes, an Enforcement Officer may issue an administrative citation to a responsible person.

- C. Once the responsible person is located, the Enforcement Officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by Chapter 1.20.03 E.
- D. The Administrative Citation shall:
  - 1. State the date and location of the violations and the approximate time the violations were observed.
  - 2. List the code sections violated and describe how the sections are violated.
  - 3. Describe the action(s) required to correct the violations.
  - 4. Require the responsible person to immediately correct the violations.
  - 5. Explain the consequences of failure to correct the violations.
  - 6. State the amount of penalty imposed for the violations.
  - 7. Explain how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty.
  - 8. Include and explain the right to appeal.
  - 9. Include the signature of the Enforcement Officer.
  - 10. The signature of the responsible person if that person can be located.
- E. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the County.
- F. The failure of any person to pay the administrative fines assessed by a administrative citation within the time specified on the citation may result in the Enforcement Officer referring the matter to the County revenue officer or tax collector to file a claim with the small claims court. Alternatively, the Enforcement Officer may pursue any other legal remedy to collect the administrative fines.
- G. An Enforcement Officer or enforcement hearing officer is authorized to assess any reasonable administrative costs in addition to the administrative penalty to compensate the enforcing agency for the cost of enforcement.
- H. The penalties assessed for each administrative citation issued for the same violation shall not exceed the following amounts:
  - 1. First violation: \$ 250.00
  - 2. Second violation within a one year period: \$500.00;
  - 3. Third or subsequent violation within a one year period: \$750.00.
- I. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the County.
- J. The failure of any person to pay the administrative fines assessed by a administrative citation within the time specified on the citation may result in the Enforcement Officer referring the matter to the County revenue officer or tax collector to file a claim with the

small claims court. Alternatively, the Enforcement Officer may pursue any other legal remedy to collect the administrative fines.

- K. Administrative fines collected pursuant to this chapter shall be deposited in the code enforcement penalties fund established pursuant to Chapter 1.20.17.

### **1.20.12 SUMMARY ABATEMENT**

- A. Whenever an Enforcement Officer determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Enforcement Officer may exercise the following powers without prior notice to the responsible person:
  - 1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed; or,
  - 2. Post the premises as unsafe, substandard or dangerous; or,
  - 3. Board, fence or secure the building or site; or,
  - 4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public; or,
  - 5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or,
  - 6. Take any other action as appropriate under the circumstances.
- B. An Enforcement Officer shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the County during the summary abatement process shall be assessed and recovered against the responsible person or property owner through the procedures outlined in Section 1.20.16.
- C. The Enforcement Officer may also pursue any administrative or judicial remedy to abate any remaining public nuisance.

### **1.20.13 ADMINISTRATIVE ABATEMENT**

- A. Whenever an Enforcement Officer determines that public or private property or any portion of public or private property is a public nuisance as generally defined in Chapter 1.20.02 or as declared in a specific section of the Monterey County Code or applicable state codes, an abatement notice may be issued to the responsible person or property owner to abate the public nuisance.
- B. The abatement notice shall:
  - 1. State the date and location of the violations and the approximate time the violations were observed.
  - 2. List the code sections violated and describe how the sections are violated.
  - 3. Describe the action(s) required to correct the violations.
  - 4. Require the responsible person to immediately correct the violations.
  - 5. Explain the consequences of failure to correct the violations.
  - 6. State the amount of penalty imposed for the violations.
  - 7. Explain how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty.
  - 8. Include explain the right to appeal.
  - 9. Include the signature of the Enforcement Officer.
  - 10. The signature of the responsible person if that person can be located.
- C. Service of Abatement Notice. The abatement notice shall be served by any one of the methods of service listed in Chapter 1.20.03 E of this Code.

- D. The Enforcement Officer shall establish a reasonable time frame for compliance based on the nature and severity of the nuisance. The time frame shall normally be ten days for a nuisance that does not involve an imminent threat to public health and safety.
- E. The responsible person may appeal the abatement notice within ten calendar days from the date of service of the abatement notice by filing a written request to appeal to an Enforcement Officer. Upon receiving a written request to appeal an abatement notice, an Enforcement Officer shall follow the procedures set forth in Chapter 1.20.15 and request the enforcement hearing officer to schedule a hearing to hear any objections why abatement should not be ordered and effected.
- F. Abatement shall not proceed until the enforcement hearing officer issues an order after an appeal by the responsible person or an appeal has not been timely filed, unless the enforcement hearing officer concludes that an imminent threat to the public's health and safety exists.
- G. If the enforcement hearing officer issues an order confirming the existence of a public nuisance, the County may immediately abate the public nuisance
- H. Once an Enforcement Officer obtains authorization to abate a public nuisance, the public nuisance may be abated by County personnel or by a private contractor. County personnel or a private contractor can enter upon private property in a reasonable manner to abate the public nuisance as specified in the abatement notice or abatement order. Interference with the County's abatement of the public nuisance by a property owner or responsible person shall constitute a misdemeanor.
- I. When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Enforcement Officer. The report shall contain the names and addresses of the responsible persons or property owners of each parcel, the tax assessor's parcel number and a legal description of the property.
- J. All administrative and actual costs incurred by the County in abating the public nuisance may be assessed and recovered against the responsible person pursuant to the provisions set forth in Chapter 1.20.16.

#### **1.20.14 RESTORATION**

- A. No application for a discretionary permit required under provisions of the Monterey County Code shall be deemed complete if there is a violation on said property of a County ordinance which regulates grading, vegetation removal or tree removal until that property has been restored to its pre-violation state.
- B. Restoration of the property shall include, but not be limited to, the revegetation of native plants and trees and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances regulating grading, vegetation removal or tree removal. Alternatives to restoration of the property shall not be considered unless the applicant can show that:
  - 1. restoration would endanger the public health or safety; or,
  - 2. restoration would potentially cause greater harm to the property or environment than other means of mitigating the violation; or,
  - 3. that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner.
- C. Plans for restoration shall be submitted to and approved by the Director of Planning and Building Inspection prior to the commencement of restoration and the plan shall include a time period to ensure reestablishment of the soil or vegetation.

- D. The Director of Planning and Building Inspection is the appropriate authority to consider and approve restoration plans.
- E. Plans for restoration shall be submitted to and approved by the Director of Planning and Building Inspection prior to the commencement of restoration and the plan shall include a time period to ensure reestablishment of the soil or vegetation.
- F. The Director shall refer the restoration plan to the Planning Commission for public hearing when the restoration work is a project under CEQA and a mitigated negative declaration or environmental impact report has been prepared.

#### **1.20.15 ADMINISTRATIVE ENFORCEMENT APPEALS**

- A. Any person aggrieved by the determination of the Enforcement Officer as to the existence of a violation of the Monterey County Code may file an appeal of that determination within ten calendar days from the date of service.
- B. The appeal shall be made in writing and filed with the County Administrative Officer and the Enforcement Officer. The appeal shall be accompanied by an appeal fee in an amount established by resolution of the Board of Supervisors.
- C. The appellant shall specifically state in the notice of appeal:
  - 1. The identity of the appellant and its interest in the decision;
  - 2. The identity of the decision appealed or the conditions appealed;
  - 3. A clear, complete, but brief, statement of the reasons why, in the opinion of the appellant, the determination of the Enforcement Officer is in error.
  - 4. The specific reasons the appellant disagrees with the findings, or decision made or conditions imposed by, the Appropriate Authority, if the appellant disagrees with such findings, decision, or conditions.
- D. The County Administrative Officer and the Enforcement Officer shall not accept an appeal stated in generalities, legal or otherwise.
- E. The receipt of a written appeal shall stay all actions, or put in abeyance all approvals or permits which may have been granted, pending the effective date of the decision of the County Administrative Officer. Upon the filing of a proper appeal, fines shall cease to be imposed unless such cessation would result in the continuation of a life, health, or safety risk.
- F. After receiving the written notice of appeal, the County Administrative Officer shall schedule a date, time, and place for the hearing.
- G. Written notice of the date, time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in Chapter 1.20.03 E of the Monterey County Code.
- H. Failure to attend the appeal hearing by the appellant shall constitute a waiver of their rights to an appeal hearing and administrative adjudication of the appeal.
- I. The County Administrative Officer may appoint a Hearing Officer to consider any appeal filed under this section. The hearing officer shall possess all the following qualifications:
  - 1. Subject matter expertise sufficient to assess the situation and facts presented by the participants in the hearing; and,
  - 2. Knowledge of the basic rules and protocols for the conduct of public hearing; and,
  - 3. Ability to produce a clear record of proceedings, findings and evidence and administrative enforcement orders.
  - 4. The County Administrative Officer may appoint a three member panel to serve as the hearing officer if in the opinion of the County Administrative Officer that based on the issues, complexity or facts of the particular case, justice may be better served by a panel decision rather than an individual's decision. A majority

agreement of the panel is needed to decide the matter. Each member of the panel shall possess the same qualifications as an individual hearing officer.

- J. Notice of the time and place of the hearing shall be served at least ten calendar days prior to the date of the hearing to the responsible person or property owner. The notice of hearing shall be served by any of the methods of service listed in Chapter 1.20.03 E.
- K. The County Administrative Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the hearing officer independently determines that due process has not been adequately afforded.
- L. The County Administrative Officer shall retain jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance, ensuring compliance with an administrative enforcement order, modifying an administrative enforcement order, or where extraordinary circumstances exist, granting a new hearing.
- M. The County Administrative Officer has the authority to require a responsible person to post a performance bond to ensure compliance with an administrative enforcement order.
- N. Formal rules of evidence and discovery do not apply. Each party shall have the opportunity to present witnesses and evidence in support of their case.
- O. The standard of proof to be used by the County Administrative Officer in deciding the issues at an administrative hearing is a preponderance of evidence standard.
- P. The County bears the burden of proof at an appeal hearing to establish the existence of a violation of the Monterey County Code or applicable state code.
- Q. Any party whose property or actions are the subject of an appeal and who fails to appear at the hearing is deemed to waive the right to a hearing and to an adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided.
- R. A written decision of the County Administrative Officer shall be issued within 30 days of the appeal hearing. The decision shall be served on all parties by any one of the methods listed in Chapter 1.20.03 E of the Monterey County Code. The decision shall become final on the date of service of the order.
- S. Judicial review of an administrative enforcement order may be sought pursuant to a writ of administrative mandamus. Once the decision becomes final, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1091.20.6.
- T. It is unlawful for a party to an appeal hearing who has been served with a copy of the final decision of the County Administrative Officer to fail to comply with the decision. Failure to comply with the decision may be prosecuted as an infraction or a misdemeanor.

#### **1.20.16 RECOVERY OF CIVIL PENALTIES AND ABATEMENT COSTS**

- A. The Enforcement Officer may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the Revenue Manager or County Counsel or District Attorney.
- B. After the County has abated a public nuisance, the Enforcement Officer shall prepare an itemized account of the total abatement costs. That account and a demand to pay shall be served on the responsible person or property owner.
- C. The responsible person may appeal the demand to pay within ten calendar days from the date of service by filing a written request to appeal to a hearing officer. Upon receiving a written appeal, an Enforcement Officer shall follow the procedures set forth in Chapter 1.20.15.



- D. The hearing officer at the cost confirmation hearing shall limit the scope of review to the Enforcement Officer's itemized account of costs together with any objections to its accuracy. The hearing officer may make such revisions, corrections or modification in the report or the account as may be just and reasonable.
- E. The hearing officer may issue an order which assesses the costs as either a personal obligation against the responsible person or property owner or a special assessment against the real property abated by the County.
- F. The hearing officer's order confirming or modifying the amount of costs incurred by the County in performing the abatement shall be final.
- G. If the hearing officer orders that abatement costs be charged as a personal obligation of the responsible person, the Enforcement Officer shall collect the obligation by use of all appropriate legal means. This may include the recordation of a nuisance abatement lien against the real property on which a nuisance is maintained. An Enforcement Officer may assess a nuisance abatement lien pursuant to Government Code Section 38773.1 by following the procedures set forth in this chapter including the requirements set forth below:
  - 1. Once a final administrative decision or judicial order establishes the amount of civil penalties, abatement costs, administrative fees and costs assessed against a responsible person for code violations, the Enforcement Officer may record a nuisance abatement lien against the real property on which the nuisance is maintained.
  - 2. Before recordation, the Enforcement Officer shall provide to the responsible person or property owner a written "Notice of Intent to Record Nuisance Abatement Lien" informing such person that a nuisance abatement lien will be recorded unless the County receives full payment for the outstanding amount of civil penalties, costs and fees within the time period prescribed in the notice. Such notice shall be served in the same manner as a summons in a civil action in accordance with California Code of Civil Procedure, commencing at Section 415.10 et seq. Payment shall be due a minimum of ten calendar days from the date of the mailing.
  - 3. If the property owner cannot be found after a diligent search, the notice can be posted on the property for a period of ten calendar days and the notice must be published in a general circulation newspaper once at least ten calendar days prior to recordation of the nuisance abatement lien.
  - 4. A nuisance abatement lien shall be recorded in the Monterey County recorder's office and from the date of recording shall have the force, effect and priority of a judgment lien.
  - 5. The nuisance abatement lien shall include the name of the agency on whose behalf the lien is imposed, the name of the property owner, responsible party and any financial institution with a legal interest in the property, the property's assessor's parcel number, the property's legal description, the total amount of civil penalties, costs and fees due, including a breakdown of penalty assessments and reimbursement for the County's administrative costs and a copy of any administrative or judicial order which awarded the civil penalties, costs and fees.
  - 6. Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Enforcement Officer shall either record a notice of cancellation or provide the property owner or financial institution with the Notice of Cancellation so they can record this notice with the Monterey County recorder's office. The notice of cancellation shall include the same information as provided for in the original

- nuisance abatement lien as described in Chapter 1.20.24 Such notice of cancellation shall cancel the nuisance abatement lien.
7. A copy of the recorded nuisance abatement lien shall be served upon the responsible person or property owner by one of the methods of service set forth in Chapter 1.20.03 of this code.
  8. The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding civil penalties.
  9. A nuisance abatement lien may be foreclosed by an action brought by the County for a money judgment. If unable to collect the nuisance abatement lien, the Enforcement Officer may refer the case to the County Counsel or District Attorney to file a court action to recover the costs.
  10. The County may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
- H. Once a final administrative decision or judicial order establishes that the amount of civil penalties, abatement costs, administrative fees and costs may be charged against the property as a special assessment, the Enforcement Officer shall prepare a notice of special assessment. The Enforcement Officer shall deliver the notice of special assessment to the County auditor who shall place it on the County assessment roll pursuant to Government Code Section 38773.5.
- I. The notice of special assessment shall include a copy of the hearing officer's cost confirmation order and shall summarize the abatement action. The Enforcement Officer may record a copy of this special assessment notice to inform any subsequent purchasers or owners of the abatement action, costs and assessment.
- J. The Enforcement Officer shall record a cancellation of special assessment notice with the Monterey County recorder when either: (i) the responsible person or property owner pays in full the abatement costs; or (ii) the Monterey County auditor or tax collector posts a lien on the property pursuant to Government Code Section 38773.5.
- K. Pursuant to the provisions of Government Code Section 38773.5 the Monterey County tax collector may collect the amount of a special assessment at the same time and in the same manner as ordinary property taxes and impose the same penalties and procedures, including the sale of the property, in case of delinquency, as provided for with ordinary property tax collection. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to the special assessment.

### **1.20.17 CODE ENFORCEMENT PENALTIES FUND**

- A. The Monterey County Code Enforcement Penalties Fund is hereby established. Each Department may establish its own account for said fund.
- B. All monies recovered by payment of the charges for the cost of enforcement, administrative penalties, or assessment of liens on the sale or transfer of the property shall be remitted to the County revenue officer or tax collector who shall credit the appropriate amount to the code enforcement penalties fund of the enforcing department(s) as provided in this Chapter or, alternatively use the monies to reimburse the department responsible for the subject code enforcement action where appropriate. All funds collected from code enforcement actions shall be deposited into a separate fund and used for the supplemental financing of code enforcement programs or alternatively to reimburse the department(s) responsible for the subject code enforcement action.

**SECTION 2. 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 3. EFFECTIVE DATE.** This Ordinance shall become effective on the 31<sup>st</sup> day after its adoption.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:

ABSTAIN:

\_\_\_\_\_  
David Potter, Chair  
Monterey County Board of Supervisors

Attest:  
SALLY R. REED, Clerk  
to the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
Charles McKee, County Counsel

By: \_\_\_\_\_  
Deputy