

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> July 30, 2008 Time: 1:30 P.M	<b>Agenda Item No.:</b> 8
<b>Subject:</b> Receive presentation and conduct public hearing to make recommendations on a proposed ordinance to add Chapter 1.21 (Administrative Remedies), Chapter 1.22 (Administrative Citations) and Chapter 2.98 (Code Enforcement Board) to the Monterey County Code for administrative procedures that govern the imposition, enforcement, collection, and administrative review of administrative fines or penalties for violations of the Monterey County Code.	
<b>Planning File Number:</b> PLN040372	<b>Countywide</b>
<b>CEQA Action:</b> Exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3).	
<b>Department:</b> RMA – Building Services Department	

### RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions:

1. Receive presentation on the proposed ordinance.
2. Conduct a public hearing on the proposed ordinance and make recommendations for staff's consideration in preparation of the final draft of the ordinance to be presented to the Board of Supervisors.

### PROJECT SUMMARY:

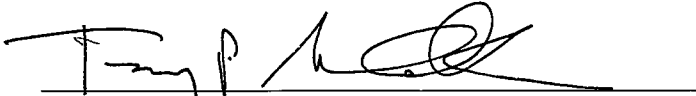
The purpose of the presentation and public hearing is to receive comments and input from interested parties and stakeholders and recommendations of the Planning Commission. Staff will consider and use all such comments, input, and recommendations to prepare the final draft of the ordinance, which staff intends to present to the Board of Supervisors in late September.

State law authorizes local agencies to adopt administrative fines and penalties for violations of their codes. This ordinance sets forth optional administrative procedures that govern the imposition, enforcement, collection and administrative review of administrative fines or penalties for violations of the Monterey County Code. Administrative procedures include the issuance of administrative citations with standard fines, compliance orders with daily accruing penalties set by a new Code Enforcement Board, and establishment of a special revenue fund for receipt of fines and penalties that would be used to defray the County's unreimbursed costs for enforcement of its laws.

The administrative procedures provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties unless the violation creates an immediate danger to health or safety. The ordinance also provides an independent review body to ensure that violations exist and appropriate penalties or fines are applied when necessary. The provisions of this ordinance will provide an effective tool in addition to the existing criminal process for code enforcement efforts. As such, all regulatory agencies within the County can use this administrative enforcement approach in addition to all other legal remedies.

This ordinance is exempt from review under the California Environmental Quality Act because it pertains to organizational and administrative activities that will not result in direct or indirect

physical changes to the environment. (CEQA Guidelines sections 15061(b)(3), 15378.)

A handwritten signature in black ink, appearing to read 'Timothy P. McCormick', written over a horizontal line.

Timothy P. McCormick, P.E. & C.B.O.  
(831) 755-6686, [McCormickT@co.monterey.ca.us](mailto:McCormickT@co.monterey.ca.us)  
July 17, 2008

**Attachments:** Exhibit A Administrative Procedures Ordinance Draft

## EXHIBIT A

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

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, TO ADD CHAPTER 1.21 (ADMINISTRATIVE REMEDIES), CHAPTER 1.22 (ADMINISTRATIVE CITATIONS) AND CHAPTER 2.98 (CODE ENFORCEMENT BOARD) TO THE MONTEREY COUNTY CODE FOR ADMINISTRATIVE PROCEDURES THAT GOVERN THE IMPOSITION, ENFORCEMENT, COLLECTION, AND ADMINISTRATIVE REVIEW OF ADMINISTRATIVE FINES OR PENALTIES FOR VIOLATIONS OF THE MONTEREY COUNTY CODE.**

### County Counsel Synopsis

*This Ordinance sets forth administrative procedures that govern the imposition, enforcement, collection, and administrative review of administrative fines or penalties for violations of the Monterey County Code. The administrative procedures provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties unless the violation creates an immediate danger to health or safety. Administrative procedures include the issuance of administrative citations with standard fines, compliance orders with daily accruing penalties set by a new Code Enforcement Board and establishment of a special revenue fund for receipt of fines and penalties that will be used to defray the County's un-reimbursed costs for enforcement of its laws.*

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

**SECTION 1.** Chapter 1.21 is hereby added to the Monterey County Code to read as follows:

### CHAPTER 1.21 ADMINISTRATIVE REMEDIES

**Sections:**

- 1.21.010 Applicability.**
- 1.21.020 Director - Defined.**
- 1.21.030 Compliance order.**
- 1.21.040 Method of service.**
- 1.21.050 Hearing.**
- 1.21.060 Notice of hearing.**
- 1.21.070 Hearing Findings and order.**
- 1.21.080 Administrative order.**

- 1.21.090 Administrative penalties.**
- 1.21.100 Administrative costs.**
- 1.21.110 Failure to comply with administrative compliance order.**
- 1.21.120 Right of judicial review.**
- 1.21.130 Recovery of administrative civil penalties.**
- 1.21.140 Report of compliance after administrative order.**
- 1.21.150 Compliance dispute.**
- 1.21.160 Lien procedure.**
- 1.21.170 Public hearing and protests.**
- 1.21.180 Recording of lien.**
- 1.21.190 Satisfaction of lien.**
- 1.21.200 Attorney Fees.**
- 1.21.210 Recovering collection costs.**
- 1.21.220 Code Enforcement Fund.**

**1.21.010 APPLICABILITY.**

This purpose of this chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the County to address any violation of this code. Use of this chapter shall be at the sole discretion of the County.

**1.21.020 DIRECTOR - DEFINED.**

For purposes of this chapter, "director" means the head of any County department, which is charged with responsibility for enforcement of any provision of this code.

**1.21.030 COMPLIANCE ORDER.**

A. Whenever the director determines that a violation of any provision of this code within the director's responsibility is occurring or exists, the director may issue a written compliance order to any person responsible for the violation.

B. A compliance order issued pursuant to this chapter shall contain the following information:

1. The date and location of the violation;
2. The section of this code violated and a description of the violation;
3. The actions required to correct the violation;
4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
5. Either a copy of this chapter or an explanation of the consequences of noncompliance with this chapter and a description of the hearing procedure and appeal process.

**1.21.040 METHOD OF SERVICE.**

A. Notice and orders may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or

residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

B. Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized county assessment roll.

C. Where personal service or service by mail upon the property owner is unsuccessful, a copy of the order shall be conspicuously posted at the property which is the subject of the order.

D. The failure of any person to receive any notice required under this chapter shall not affect the validity of any proceedings taken under this chapter.

#### **1.21.050 HEARING.**

A. If the director determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.

B. If full compliance is not achieved within the time specified in the compliance order, the director shall advise the Clerk of the Code Enforcement Board to set a hearing before the Board.

C. Any person identified responsible for the violation in a compliance order may request a hearing to present evidence to contest that there was a violation of the code or that he or she is the responsible party.

D. The Clerk of the Code Enforcement Board shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized county assessment roll available on the date the notice is prepared.

#### **1.21.060 NOTICE OF HEARING.**

A. Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the Code Enforcement Board.

B. Each hearing shall be set for a date not less than fifteen days or more than sixty days from the date of the notice of hearing unless the director determines that the matter is urgent or that good cause exists for an extension of time.

C. This hearing serves to provide the full opportunity of a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a compliance order, pursuant to this chapter, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

#### **1.21.070 HEARING - FINDINGS AND ORDER.**

A. At the place and time set forth in the notice of hearing, the Code Enforcement Board shall conduct a hearing on the compliance order issued pursuant to Section 1.21.030.

B. The Board shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator or by the real property owner.

C. Within a reasonable time following the conclusion of the hearing, the Board shall make findings and issue its determination regarding:

1. The existence of the violation;
2. The failure of the violator or owner to take required corrective action within the required time period.

D. The Board shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.

E. If the Board finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the Board shall issue an administrative order.

F. If the Board finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, the Board shall issue a finding of those facts.

#### **1.21.080 ADMINISTRATIVE ORDER.**

If the Code Enforcement Board determines that a violation occurred which was not corrected within the time period specified in the compliance order, the Board shall issue an administrative order described in Section 1.21.070 which imposes any or all of the following:

- A. An order to correct, including a schedule for correction where appropriate;
- B. Administrative penalties as provided in Section 1.21.090;
- C. Administrative costs as provided in Section 1.21.100.

#### **1.21.090 ADMINISTRATIVE PENALTIES.**

A. The Code Enforcement Board may impose administrative penalties for the violation of any provision of this code in an amount not to exceed a maximum of two thousand five hundred dollars per day for each ongoing violation, except that the total administrative penalty shall not exceed one hundred thousand dollars exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.

B. In determining the amount of the administrative penalty, the Board may take any or all of the following factors into consideration:

1. The seriousness of the violation;
2. The duration of the violation;
3. The impact of the violation on the community
4. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
5. The extent to which the person derived a financial benefit from the violation

6. The good faith efforts of the violator to come into compliance;
7. The financial ability of the person to pay
8. Such other factors as justice may require.

C. Administrative penalties imposed by the Board shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the director or the Board.

D. The Board, in its discretion, may suspend the imposition of applicable penalties for any period of time during which:

1. The violator has filed for necessary permits; and

2. Such permits are required to achieve compliance; and
3. Such permit applications are actively pending before the County, state or other appropriate governmental agency.

E. Administrative penalties assessed by the Board shall be due by the date specified in the administrative order.

F. Administrative penalties assessed by the Board are a debt owed to the County and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.

G. If the violation is not corrected as specified in the Board's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 1.21.090.A. above.

H. If the violator gives written notice to the director that the violation has been corrected and if the director finds that compliance has been achieved, the director shall deem the date the written notice was postmarked or personally delivered to the director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the director, the violation will be deemed corrected on the date of the final inspection.

#### **1.21.100 ADMINISTRATIVE COSTS.**

A. The Code Enforcement Board shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.

B. The administrative costs may include any and all costs incurred by the County in connection with the matter before the Code Enforcement Board including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections necessary to enforce the compliance order.

#### **1.21.110 FAILURE TO COMPLY WITH ADMINISTRATIVE COMPLIANCE ORDER.**

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the Code Enforcement Board may be enforced as:

A. A personal obligation of the violator; and/or

B. If the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

#### **1.21.120 RIGHT OF JUDICIAL REVIEW.**

A. Notwithstanding the provisions of Section 1.25.010 of the Monterey County Code or Sections 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the Code Enforcement Board, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the Code Enforcement Board's file in the case shall be

received in evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the Clerk of the Code Enforcement Board by the contestant. A copy of the document or instrument of the Code Enforcement Board providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A proceeding under this subdivision is a limited civil case.

B. If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

C. If the court finds in favor of the contestant, the amount of the court appeal fee shall be reimbursed to the contestant by the County. Any deposit of the fine or penalty shall be refunded by the County in accordance with the judgment of the court.

D. If the decision of the court is against the contestant and the fine or penalty has not been deposited, the County may proceed to collect the penalty pursuant to the procedures set forth in its ordinances.

#### **1.21.130 RECOVERY OF ADMINISTRATIVE CIVIL PENALTIES.**

The County may collect the assessed administrative penalties and administrative costs by use of all available legal means, including recordation of a lien pursuant to Section 1.21.160.

#### **1.21.140 REPORT OF COMPLIANCE AFTER ADMINISTRATIVE ORDER.**

If the director determines that compliance has been achieved after a compliance order has been sustained by the Code Enforcement Board, the director shall file a report indicating that compliance has been achieved.

#### **1.21.150 COMPLIANCE DISPUTE.**

A. If the director does not file a report pursuant to Section 1.21.210 above, a violator who believes that compliance has been achieved may request a compliance hearing before the Code Enforcement Board by filing a request for a hearing with the Clerk of the Board.

B. The hearing shall be noticed and conducted in the same manner as a hearing on a compliance order provided in Sections 1.21.060 through 1.21.070 of this chapter.

C. The Board shall determine if compliance has been achieved and, if so, when it was achieved.

#### **1.21.160 LIEN PROCEDURE.**

A. Whenever the amount of any administrative penalty and/or administrative cost imposed by the Code Enforcement Board pursuant to this chapter in connection with real property has not been satisfied in full within 20 days after service of the final administrative order or decision of the Code Enforcement Board, this obligation may constitute a lien against the real property on which the violation occurred.

B. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Sections 697.340 of



the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

C. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

D. Prior to recording any such lien, the director of the department who issued the compliance order or his or her designee shall prepare and file with the Clerk of the Code Enforcement Board a report stating the amounts due and owing.

E. The Clerk of the Code Enforcement Board shall fix a time, date and place for hearing such report and any protests or objections thereto by the Code Enforcement Board.

F. The director of the department who issued the compliance order or his or her designee shall cause written notice to be served on the property owner not less than ten days prior to the time set for the hearing. Such notice shall be served as provided in Section 1.21.040 of this chapter.

#### **1.21.170 PUBLIC HEARING AND PROTESTS.**

A. Any person whose real property is subject to a lien pursuant to Section 1.21.160 may file a written protest with the Clerk of the Code Enforcement Board and/or may protest orally at the Code Enforcement Board hearing on the matter:

B. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

C. The Code Enforcement Board, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien.

#### **1.21.180 RECORDING OF LIEN.**

Thirty days following the adoption of a resolution by the Code Enforcement Board imposing a lien, the Clerk of the Code Enforcement Board shall file the same as a judgment lien in the office of the County Recorder of Monterey County, California. The lien may carry such additional administrative charges as set forth by resolution of the Code Enforcement Board.

#### **1.21.190 SATISFACTION OF LIEN.**

Once payment in full is received by the County for outstanding penalties and costs, the director of the department who issued the compliance order or his or her designee shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the office of the county recorder. Such notice of satisfaction shall cancel the County's lien.

#### **1.21.200 ATTORNEY FEES.**

In the event a civil action is initiated to obtain enforcement of the final administrative order of the Code Enforcement Board, and judgment is entered to enforce the order, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney's fees.

**1.21.210 RECOVERING COLLECTION COSTS.**

A. Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees.

B. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.

C. Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

**1.21.220 CODE ENFORCEMENT FUND.**

All fines and penalties paid in compliance with a final administrative order of the Code Enforcement Board shall be placed in a special revenue fund for code enforcement purposes. Receipt of fines and penalties shall be used to defray the County's unreimbursed costs for enforcement of its laws. All payments for reimbursement of administrative costs shall be credited to the County fund responsible for the department that issued the compliance order.

**SECTION 2.** Chapter 1.22 is hereby added to the Monterey County Code to read as follows:

**CHAPTER 1.22  
ADMINISTRATIVE CITATIONS**

**Sections:**

- 1.22.010 Applicability.**
- 1.22.020 Enforcement officer - Defined.**
- 1.22.030 Administrative citation.**
- 1.22.040 Method of service.**
- 1.22.050 Amount of fines.**
- 1.22.060 Payment of the fine.**
- 1.22.070 Hearing request.**
- 1.22.080 Advance deposit hardship waiver.**
- 1.22.090 Hearing procedure.**
- 1.22.100 Decision of the Board.**
- 1.22.110 Recovery of administrative citation fines, enforcement and collection costs.**
- 1.22.120 Right to judicial review.**
- 1.21.130 Code Enforcement Fund.**

**1.22.010 APPLICABILITY.**

A. This chapter provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the County to address any violation of this code.

B. Use of this chapter shall be at the sole discretion of the County.

**1.22.020 ENFORCEMENT OFFICER - DEFINED.**

For purposes of this chapter, "enforcement officer" shall mean any County employee or agent of the County with the authority to enforce any provision of this code.

**1.22.030 ADMINISTRATIVE CITATION.**

A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.

B. Each administrative citation shall contain the following information:

1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;
2. The address or a definite description of the location where the violation occurred;
3. The section of this code violated and a description of the violation;
4. The amount of the fine for the code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
8. The name and signature of the citing enforcement officer.

C. Enforcement officers shall provide for a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the issuance of the administrative citation when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

**1.22.040 METHOD OF SERVICE.**

A. The administrative citation and all notices required to be given by this chapter may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

B. The failure of any person to receive any administrative citation and notice required under this chapter shall not affect the validity of any proceedings taken under this chapter.

**1.22.050 AMOUNT OF FINES.**

A. The amounts of fines for code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the Board of Supervisors.

B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within thirty-six months from the date of an administrative citation.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

**1.22.060 PAYMENT OF THE FINE.**

A. The person responsible for the violation shall pay the fine to the County within thirty days from the date of the administrative citation. Any person who fails to pay to the County any fine imposed pursuant to the provisions of this chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

B. Any administrative citation fine paid pursuant to subsection A. shall be refunded if the director of the department that issued the citation or the Code Enforcement Board determines that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

C. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

**1.22.070 HEARING REQUEST.**

A. Any recipient of an administrative citation may contest that there was a violation of the code or that he or she is the responsible party by completing a Request for Hearing form approved by the Board and returning it to the Clerk of the Code Enforcement Board within thirty days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed.

B. A request for hearing form may be obtained from the department specified on the administrative citation.

C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

D. If the enforcement officer submits an additional written report concerning the administrative citation to the Code Enforcement Board for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

**1.22.080 ADVANCE DEPOSIT HARDSHIP WAIVER.**

A. Any person who intends to request a hearing to contest that there was a violation of the code or that he or she is the responsible party and who is financially

unable to make the advance deposit of the fine may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the Clerk of the Code Enforcement Board on an advance deposit hardship waiver application form approved by the Board for such use with all supporting documents and materials within fifteen days of the date of the administrative citation.

C. The requirement of depositing the full amount of the fine shall be stayed unless or until the Code Enforcement Board makes a determination not to issue the advance deposit hardship waiver.

D. If the Board determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the County within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.

F. The Board shall issue a written determination listing the reasons for its determination to issue or not issue the advance deposit hardship waiver. The written determination of the Board shall be final and shall be served upon the person who applied for the advance deposit hardship waiver.

#### **1.22.090 HEARING PROCEDURE.**

A. No hearing to contest an administrative citation before the Board shall be held unless the fine has been deposited in advance or an advance deposit hardship waiver has been approved in accordance with Section 1.22.080.

B. A hearing before the Board shall be set for a date that is not less than fifteen days and not more than sixty days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

C. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

E. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

F. The Board may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

#### **1.22.100 DECISION OF THE BOARD.**

A. After considering all of the testimony and evidence submitted at the hearing, the Board shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the Board shall be final.

B. If the Board determines that the administrative citation should be upheld, then the fine amount on deposit with the County shall be retained by the County.

C. If the Board determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the Board shall set forth in the decision a payment schedule for the fine.

D. If the Board determines that the administrative citation should be canceled and the fine was deposited with the County, then the County shall promptly refund the amount of the deposited fine, together with interest at the average rate earned on the County's portfolio for the period of time that the fine amount was held by the County.

E. The recipient of the administrative citation shall be served with a copy of the Board's written decision.

**1.22.110 RECOVERY OF ADMINISTRATIVE CITATION FINES, ENFORCEMENT AND COLLECTION COSTS.**

A. The County may collect any past due administrative citation fine or late payment charge by use of all available legal means.

B. Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees.

C. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.

D. Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

**1.22.120 RIGHT TO JUDICIAL REVIEW.**

Notwithstanding the provisions of Section 1.25.010 of the Monterey County Code or Sections 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the Code Enforcement Board, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the Code Enforcement Board's file in the case shall be received in evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the Clerk of the Code Enforcement Board by the contestant. A copy of the document or instrument of the Code Enforcement Board providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A proceeding under this subdivision is a limited civil case.

**1.21.130 CODE ENFORCEMENT FUND.**

All fines and penalties paid in compliance with a final administrative order of the Code Enforcement Board shall be placed in a special revenue fund for code enforcement purposes. Receipt of fines and penalties shall be used to defray the County's unreimbursed costs for enforcement of its laws. All payments for reimbursement of administrative costs shall be credited to the County fund responsible for the department that issued the compliance order.

**SECTION 3.** Chapter 2.98 is hereby added to the Monterey County Code to read as follows:

**CHAPTER 2.98  
CODE ENFORCEMENT BOARD**

**Sections:**

- 2.48.010 Creation.**
- 2.48.020 Purpose and scope of Board.**
- 2.48.030 Membership.**
- 2.48.040 Board administration.**
- 2.48.050 Powers and duties.**

**2.48.010 CREATION.**

There is hereby created a Code Enforcement Board (hereafter referred to as "Board") for the County of Monterey (hereafter referred to as "County").

**2.48.020 PURPOSE AND SCOPE OF BOARD.**

This chapter intends to protect, promote, and improve the public health, safety, and welfare by creating an administrative board with the authority to issue remedial orders and impose civil fines and penalties as an additional or supplemental means of obtaining compliance with violations of the Monterey County Code and state laws delegated by statute to any County department for enforcement.

**2.48.030 MEMBERSHIP.**

**A. Appointment.** The Board shall be composed of seven members who shall be selected and appointed by the Board of Supervisors.

**B. Representation.** Five members of the Board shall be appointed to represent the following community interests: property owners, business owners, construction and design, land use planning and the preservation of natural resources. Two members of the Board shall be appointed to represent the public-at-large.

**C. Residency.** Each member of the Board shall have resided within the unincorporated limits of the County of Monterey for a minimum period of one (1) year prior to the date of the member's appointment and shall reside there throughout their term in office.

**D. Conflict of Duties.** No member of the Board shall hold any elected or appointed office, whether paid or unpaid, or any position of employment with the County of Monterey.

**E. Term.** The initial appointments to the Board shall be as follows: Two (2) members appointed for a term of one (1) year each; three (3) members appointed for a term of two (2) years each and two (2) members appointed for a term of three (3) years each. All subsequent appointments shall be made for a term of three (3) years. A member may be reappointed, subject to approval of the legislative body.

**F. Removal.** Members of the Board may be removed for misconduct, inefficiency, or willful neglect of duty by a majority vote of the Board of Supervisors.

**G. Compensation.** Each member of the Board shall be paid the sum of one hundred dollars per meeting for each meeting attended up to a maximum of two

hundred dollars per month. Members shall also be reimbursed at the current County mileage rates for matters affecting the functions and duties of the Board.

#### **2.48.040 BOARD ADMINISTRATION.**

A. Presiding Officer. The Board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who shall be the presiding officer and a full voting member of the Board. In the absence of the chair, the remaining members of the board shall select one (1) of their number to preside in place of the chair and exercise the powers of the chair during his or her absence.

B. Quorum. The presence of four (4) or more members shall constitute a quorum. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of the Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify his or herself from voting on the matter and shall not be counted for purposes of establishing a quorum.

C. Regular Public Meetings. All regular, adjourned regular and special Board meetings shall be held at regular specified times each month and shall be public meetings as required or not otherwise exempted by the Ralph M. Brown Act (the "Brown Act"), California Government Code Sections 54950, et seq.

D. Minutes. Minutes shall be kept for all proceedings of the Board and the vote of each member on any issue decided by the board shall be recorded in the minutes.

E. Clerk of the Board. The Director of Building Services or his or her designee shall act as Clerk of the Code Enforcement Board and shall provide clerical and administrative personnel as reasonably required by the Board for the proper conduct of its functions, powers and duties.

F. County Counsel. County Counsel or his or her designee shall provide legal counsel to the Board independent of any counsel provided to County agencies bringing forth enforcement actions.

#### **2.48.050 POWERS AND DUTIES.**

The board shall have the following functions, powers, and duties:

A. Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the laws of the United States, the State of California, and the County of Monterey.

B. Conduct hearings to determine whether there has been a violation of any County ordinance that the Board has jurisdiction to enforce.

C. Issue subpoenas for the attendance of witnesses, to compel their attendance and testimony, to administer oaths and affirmations, to take evidence and to issue subpoenas for the production of any books, papers, records, accounts, documents, or other items that may be relevant to investigation or enforcement action for violations of County ordinances. Any authorized agent or employee of the County whose duty is to assure compliance with County ordinances may serve a subpoena issued by the Board.

D. Make findings and issue orders that are necessary to remedy any violation of a County ordinance that the Board has jurisdiction to enforce including imposing conditions for the continued use of the subject property or activity.



Impose administrative fines and penalties and orders to recover enforcement costs as authorized by ordinance on any person found to have violated any ordinance that the Board has jurisdiction to enforce.

E. Conduct hearings to contest amounts of fines, penalties and enforcement costs or other sums of money owed to the County related to enforcement actions.

F. Order the imposition of a lien, assessment, special collection or other collection process against a responsible party and any affected property, as appropriate after hearing for objections to the filing of liens or special assessments on real property.

G. Perform such other programs or functions related to administrative hearings and appeals that the Board of Supervisors or Chief Administrative Officer may, from time to time, authorize or request.

**SECTION 4. 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 5. EFFECTIVE DATE.**

This Ordinance shall become effective on the 31st day after its adoption.

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

AYES: \_\_\_\_\_ Supervisors

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

\_\_\_\_\_  
Fernando Armenta, Chair  
Monterey County Board of Supervisors

Attest:

ANNETTE D'ADAMO  
Interim Clerk of the Board

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

APPROVED AS TO FORM:

LEROY W. BLANKENSHIP  
Assistant County Counsel