

MARIPOSA COUNTY

Code Compliance Advisory Committee

MEETING #28 DRAFT MINUTES

DATE: May 17, 2023

TIME: 2:00 - 4:00 PM

LOCATION: Board of Supervisors Chambers, 2nd Floor
5100 Bullion Street, Mariposa CA

1. Call to Order and Welcome at 2:09 p.m. by Chair Woblesky.

CCAC Members Present: Kris Casto, Lydia Clary, Gabe Edwards, Robert Fox, Ken Melton, Colleen Rhodes, Cassandra Beth Scaffidi, and Karen Woblesky.

CCAC Member Absent: None.

County Staff Present: Steve Engfer (Planning), Debbie Willis (Building, partial meeting).

Public Present: Al Golub.

Chair Woblesky welcomed members, guest, and staff and announced the presence of a quorum.

2. Approve Minutes of CCAC Meeting #27, 5/3/2023.

Members reviewed the minutes and suggested no changes.

Motion by Edwards to approve the minutes as submitted.

Second by Scaffidi.

Motion passed: 8 ayes, 0 nays, unanimous.

3. Final Review/Discussion/Possible Action presented by Gabe Edwards re: New Vehicle Abatement Ordinance and Board of Supervisors Recommendation to replace County Ordinance Chapter 8.32 (NOTE: This agenda item is carried over from CCAC #27, May 3, 2023)
Agenda packet includes: New Mariposa County Vehicle Abatement Ordinance

Chair Woblesky gave a short introduction and thanked Edwards for his work on this item.

Edwards recommended that the new code language proposed, which was slightly modified by him and based closely on CHP model code, be adopted by the Board after the appropriate process by the CCAC and county staff. Engfer described the process in detail. Edwards emphasized the requirement that the new process be staffed by current county employee(s), the CHP would be involved rather than the Sheriff, a private tow company would provide the removal service, the removed vehicle would be crushed into scrap metal and not parted out or dismantled, funding is available, appropriate

records must be kept, and the program should soon become revenue positive, as it is elsewhere. Discussion followed, including confusion and concern as to the definitions of “nuisance,” and “attractive nuisance.”

Motion by Edwards to request Board of Supervisors approval for staff to work on the recommended model code included in the agenda packet for this item.

Second by Scaffidi, (with a request for clarification of the textual changes made by Edwards to the model code couched in terms of a friendly amendment; Edwards provided clarification).

Motion passed: 8 ayes, 0 nays, unanimous.

4. Final Review/Discussion/Possible Action presented by Lydia Clary re: Updated County Codes, County Ordinances, and County Resolutions and Recommend Changes to the Board of Supervisors (NOTE: This agenda item is carried over from CCAC #27, May 3, 2023)
Agenda packet includes:

- Updated County Code 15.10.240 Notice of Non-compliance - Updated County Code 15.10.050 Expiration of Building Permits - Updated Ordinance 2020–1153 Post Disaster Recovery - Updated Ordinance #1173 - Updated Resolution 92-525 - Updated Resolution 2019-731

Chair Woblesky gave a short introduction. Clary indicated not all the items will be addressed today. Those to be discussed include the two from Title 15 and Resolution 2019-731; also relevant is the 1997 Uniform Code for Abatement of Dangerous Buildings. Discussion followed, including much confusion regarding the definitions of several terms, especially “substandard” and “unsafe.”

Engfer again clarified processes involved when items are recommended to the Board of Supervisors to authorize work by staff with the goal in mind of adopting recommended code language changes.

Motion by Edwards to request that Clary work with staff to finalize language for eventual recommendation of code changes to the Board of Supervisors.

Second by Clary.

Motion passed. 7 ayes (Casto, Clary, Edwards, Fox, Melton, Scaffidi, Woblesky), 1 nay (Rhodes).

5. Review/Discussion/Possible Action re: Draft Resolution 2019-218, Exhibit 2, Chapter 1.42, Abatement of Nuisances (NOTE: This agenda item is carried over from CCAC #27, May 3, 2023) Agenda packet includes:

- CCAC 4/18/2023 PPT Slide #12: CCAC Ad Hoc - Code Compliance Case Log Review - 2019-218
- 1.42.030: Nuisance - Defined (ONLY) - CA Civil Codes - Nuisance Defined

Chair Woblesky announced that the meeting end time will be extended today due to the late start.

Engfer announced that at least partly because of some discussions involving the CCAC, an internal county staff code compliance group will be formed with various departments involved and at the table at one time. The staff participants may review the existing list as well as new cases as they come in. The group may work to categorize them. Clary enthusiastically welcomed the news and stated that

such a group would be consistent with recommendations she has made previously and will be a huge tool that can prove very useful.

The Chair then introduced the discussion of 2019-218, with an emphasis on Chapter 1.42, and a further emphasis on nuisances as defined therein. She asked whether this particular draft proposal is the right way, whether it has the right tools for the county to solve code compliance problems. Asked for ideas from members, which she wrote on the whiteboard for further discussion.

Casto stated that in general she sees this draft code, both Chapters 1.40 and 1.42, as a final step not a first step. Believes that many problems can be resolved without such extensive processes and procedures as are defined in them. Reiterated that these should be the last step, not the first step. Would like to look in more detail at the idea of administrative agreements. Believes that discussions and negotiations should occur well before more serious steps are taken and that most problems will be able to be resolved cooperatively. Thinks grants, loans, and amnesty programs should be recommended as an earlier step. Suggests there may be some potential for using a third-party mediator. Does not like the one-person hearing officer and would prefer a three-person board.

Fox believes these proposed code changes kick off an onerous process that could end in a property owner having their property seized. Believes an objective set of criteria must be defined. A single person cannot be allowed to make the determination whether a code violation exists. Such a process lacks objectivity, threatens arbitrariness, and may lead to eventual invalidation in the courts. Is very concerned about the caveats regarding notice not being received because it seems to anticipate failures rather than ensure successes. Thinks a better process needs to be developed. Believes the hearing processes set up an artificial system in the place of court processes. Believes this proposal tends to turn the entire county into a homeowners' association, which has no appeal for him and others.

Melton thinks the whole thing should be thrown away. The nuisance definitions are not well written. Those definitions need to be reconsidered in detail. The many nuisances as defined under 1.42 go too far. Believes they should be whittled down to something reasonable, which they are not as written.

Edwards believes it is essential that we begin by defining the problem we want to solve. Referred to a range of state statutes, which impact this subject area. Thinks that 1.42 has characteristics of an omnibus bill, places too much power in one person's hands.

Scaffidi stated that her biggest objection is that there is overreach, especially as regards the hearing officer. Thinks the requirement that the hearing officer make findings of fact and conclusions of law would require the hearing officer be an attorney. Believes the proposed code bypasses the legal system. The many fines and dates as defined are unclear and would surely result in conflicting interpretations due to failure to define whether holidays and more are to be counted. The failure to accommodate interruptions and inevitable delays due to extreme weather and other disasters is a problem in an area such as ours. The proposed language contradicts and conflicts with itself; there is no continuity. The code official seems to be given the power to define what is a public nuisance. Some of the nuisance definitions don't make sense and aren't nuisances at all. The discussion needs to be centered on nuisances that are or could be a threat or hazard to many people rather than just to one or two. Appears to be a slippery slope into violating constitutional protections as defined by the First and Fourth Amendments, due process, privacy rights, and more.

Rhodes stated that the Board of Supervisors wants answers to what it perceives as code enforcement problems, but does not appear to see eye to eye with the CCAC. The county has made many of its own problems due to bungled processes and doesn't deal effectively with any particular nuisance and actually abate it. The state has provided strong guidelines for general law counties such as ours. A range of processes are available including cooperative abatement, which could be very good for relationships between the Board and constituents. Summary abatement allows for problems to be remedied quickly. Chapter 1.42 is an administrative abatement process, which unfortunately violates the very state law that authorizes administrative abatement.

Engfer interrupted, stating that he would like to have exact statutes, a list of those, the very state laws, including the Government Codes, that members say are inconsistent.

Rhodes stated that the hearing officer definition in 1.42 violates state law. Chapter 1.40 violates state law in several ways. One example, 1.40.050 subsection L misstates Government Code section 54988, which is about abatement, not administrative citations. That subsection also inaccurately and dishonestly incorporates the word "fines." It is essential to distinguish between "costs," "fees," and "fines," which are defined by state law. This code violates these state law distinctions. California Constitution Article 13C limits fees, as required by Proposition 26. The statute of limitations has passed for most of the listed violations under both civil and criminal theories. Mariposa County Code already has the tools to abate problems under a judicial abatement process or criminal prosecution – misdemeanors and infractions. The CCAC needs to move on to amnesty, ARPA funding, CDBG grants, and other cooperative efforts to deal with these issues.

Chair Woblesky then asked where do we go from here? Clary responded that she would like to move forward with amnesty and other programs, that we were told in writing by Williams that we were not to review 2019-218. Our instructions were very specific about not involving ourselves with 2019-218.

Engfer again stated that he wants to know the specific references as to how it violates other laws. Believes that specificity would be a useful tool, as in "here's what was written, here's the law it violates."

Woblesky pointed out that the CCAC was told to look at code compliance processes and procedures. The CCAC wants to move forward with developing innovative processes and programs as its authorizing language said it was to do.

Engfer wants to be able to let decision makers know exactly what is wrong with 2019-218. Needs objective information.

Woblesky does not want any one-on-one discussions of 2019-218. Believes the entire CCAC needs to be involved. Perhaps a roundtable with the Board.

[Microphones did not pick up several minutes of discussion.]

Ken Melton and Rob Fox departed before the discussion ended.

6. Discussion/Possible Action re: Future CCAC Agenda Items. Next CCAC Meeting is scheduled for June 7, 2023. (Meeting #29)

Clary stated that she may be able to invite a hearing officer with real world experience to a future meeting.

Engfer stated that a fellow from Sonoma County would be willing to provide information about their processes and experiences to the CCAC.

Casto would like to discuss what makes a violation a health or safety matter.

7. Persons wishing to speak on a matter not on the agenda, but within the jurisdiction of the committee.

No public comment was solicited or offered.

8. Adjourned at 4:48 p.m.

Motion by Edwards to adjourn.

Second by Scaffidi

Motion passed. 6 ayes, 0 nays, unanimous among the remaining members.

Minutes submitted by,

Colleen Rhodes
CCAC Secretary