

MARIPOSA COUNTY

Code Compliance Advisory Committee

MEETING #8 FINAL MINUTES

DATE: May 4, 2022 (approved 6/15/22)

TIME: 2:00 - 4:15 PM

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

1. Call to Order: 2:02 PM. Welcome.

CCAC Members Present: Eileen Collins, Nancy Kemp, Colleen Rhodes, Karen Smith, Danette Toso and Karen Woblesky.

CCAC Members Excused: Lydia Clary and Gabe Edwards

County Present: Sarah Williams, Corrina Miranda, Steve Dahlem and Miles Menetrey. Debra Willis arrived at 3:40 p.m.

Public Present: Andre Wright, Karie Williams, Al Golub, Jeannine Marsh, Madison Kirkpatrick (*Mariposa Gazette*), and Barbara Cone.

2. Approve Minutes of CCAC Meeting #7 4/20/22

Williams noted the need to correct the spelling of name Karie Williams.

Motion by Toso to approve minutes as corrected.

Seconded by Collins.

Motion passed unanimously.

3. Presentation by County Counsel Steve Dahlem regarding Abatement, Voluntary Abatement, Junk, and status of County Codes relating to enforcement of these issues; Discussion/Possible Recommendation

Dahlem announced that the topics he would cover in his presentation include nuisance abatement, administrative abatement, judicial abatement, and the CCAC member-submitted questions.

ABATEMENT OF NUISANCE Administrative abatement – Reference: Government Code (GC) Section 25845. GC permits, but does not require, local jurisdictions to adopt ordinance for administrative abatement. Due process requires the ordinance provide for notice of the abatement and the opportunity for property owners to appear before the Board of Supervisors prior to abatement by the County.

Mariposa County Code does not have comprehensive procedures for administrative abatement that follow GC, except for Chapter 8.44 for marijuana. Chapter 8.44 has not been used because the sheriff has authority to remove plants.

The previously proposed Chapter 1.42 considered by the Board of Supervisors (BOS) in 2020 would've adopted procedures per GC.

Even with an administrative nuisance abatement order, property owner consent or a court order is required for the abatement work. See the CA municipal law handbook from the CA League of Cities. A property owner has a reasonable expectation of privacy.

In 3 of the 4 cases cited to the CCAC two meetings ago, the local jurisdictions had an administrative abatement ordinance in place, similar to what the County BOS considered in 2020. The Napa case involved Food and Ag Code. None of cases were resolved in 4-8 months and with no cost. It actually took a total of 4-8 years, from the start of the process to the final resolution. He did not see evidence that fees and costs rewarded were actually recovered by the local jurisdiction.

ABATEMENT OF NUISANCE Judicial abatement - Reference: Code of Civil Procedure Section 731. Civil Code permits a judicial action to enjoin or abate a public nuisance. Civil action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by a nuisance or by the county as a property owner.

If action taken by the state in its representative capacity, abatement is allowed, but cannot recover money damages or costs of abatement.

If action taken by county as a property owner, abatement and damages may be obtained.

ABATEMENT OF NUISANCE Conclusion: County will need to adopt administrative nuisance abatement ordinance to effectively conduct nuisance abatement and recover its costs and attorney fees.

Rhodes asked about GC 53069.4 as it applies to administrative fines programs and constraints to counties, which cannot impose fines on certain violations unless a reasonable period of time for correcting the violation has been allowed.

Rhodes reiterated her statement that abatements had been completed within 4-8 months in the cases mentioned previously. She never said that the cases were over within that period. Abatement of the nuisances is the primary goal we need to achieve, and abatements were done within the 4-8 months.

Continued discussion followed about these cases, including who brought each action. Dahlem stated that administrative fines programs were a part of three of these cases.

Rhodes is interested in getting the nuisances cleared in the most timely way. We've been told that only about 55% of MC cases are corrected timely, while 45% of cases remain problems for extreme periods of time.

Woblesky asked about timelines, appeals, abatement actions and costs to county and property owner.

Dahlem said that costs can get out of hand quickly. Depends on the case – how much work and what type of work is required. Depends on how much the case is contested. This drives up costs with attorneys' fees.

Rhodes asked about the terms "civil penalties" and "administrative fines." What is the legal distinction between these two terms?

Dahlem said he did not know that there is much of a legal distinction. A penalty and a fine are both monetary penalties.

Rhodes stated that it appears that fines and penalties cannot be included in liens, but has nevertheless seen other counties include them in their program language. What law would authorize this given that governors have repeatedly vetoed legislation that would allow it?

Dahlem said he is a generalist but would say that special assessments are authorized, and that the ordinance needs to establish a procedure to be followed in order to assess those penalties through property taxes.

Rhodes said if the legislature tries to include something and governors keep vetoing it, there appears to be a meeting of the minds that this is something that is not in the law.

Dahlem said Rhodes makes a good point and that would need to be followed up on. He agreed that we would need to heed the caution that Rhodes is suggesting and if we propose to adopt code that includes fines as special assessments, we need to make sure we are on solid ground.

PUBLIC RECORDS ACT (PRA) APPLICABILITY TO CODE CASE FILES

Dahlem stated that the PRA does require disclosure of contents of code enforcement files less the name, address and phone number of the complainant. Based on GC Section 6250. The bottom line is that records are presumed to be public. Information about the conduct of the people's business is accessible to the public.

GC 6255 provides that an agency may withhold document if the public interest is better served by withholding than by disclosure. Withholding a complainant's name, address, and telephone may be proper, but the remainder of the file is a public record that should be disclosed.

Rhodes questioned if the county was preparing a court case, could attorney work product be withheld. Dahlem said the court could order disclosure upon a showing of good cause.

QUESTIONS FROM CCAC MEMBERS

1. How much money is in the county's abatement fund?

Dahlem's response: There is no abatement fund for the reasons I've discussed.

2. What are the steps to initiate an abatement process?

Dahlem's response: Process was discussed in presentation.

3. How many involuntary abatements has the county conducted in the past 10 years?

Dahlem's response: Time frame not certain, but there have been 2 receivership cases – one was junkyard in downtown Coulterville. For that case, the property owner was pleased with and supportive of results.

4. Tempe, Arizona has a voluntary abatement program. What would be the steps required for the County to pursue something similar?

Dahlem's response: The county has always sought voluntary compliance. The county works with property owners. As long as the property owners are making progress, the county will work with them informally and voluntarily to do the compliance activities (voluntary work on part of property owners).

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5. How many code compliance cases has the county taken to court? How long does it take to get a case to court?

Dahlem's response: There have been no cases referred to County Counsel's Office since the Board gave direction to pursue nuisance abatement and administrative citations ordinances. There have been two cases recently referred to the DA's office for criminal prosecution.

6. When code staff cannot determine who the legal property owner is, does your office assist?

Dahlem's response: County Counsel's Office can assist with filing a quiet title action using existing resources. Will result in title issued.

7. What can the county do about squatter cases?

Dahlem's response: Squatting is a trespass issue. The property owner must make a complaint to law enforcement and requires law enforcement to respond.

8. Are code compliance case files discoverable via a PRA request?

Dahlem's response: Yes, all but information about the complainant.

Woblesky – if code amendments had passed in 2020, what would the abatement fund have been by now.

Dahlem said initially would be a negative fund balance, until costs are recovered.

Woblesky referenced City of Tempe program. The City works with property owners to get compliance, so don't have to go to court. City may loan money to help property owners.

Dahlem said sounds like a worthwhile endeavor. Would be policy decision by Board, which ultimately would be enacted by ordinance.

No other CCAC or public questions or input.

4. Discussion/Possible Recommendation regarding Junkyards, Health and Safety Violations

Woblesky referred the current code case list and identification of Health and Safety (HS) cases. This is a continuation of conversation from last meeting.

Discussion included the following points:

- Collins: Amnesty program would be best to be open to everyone, even those who are not currently on the active case list. Otherwise, would be confusing. Need to open to all.
- Woblesky: Other county departments are often involved in HS cases, such as for hoarding (Health and Human Services Agency or HHSA) or abandoned vehicles (Sheriff's department). Is there a way of breaking this down?
- Public – Wright: Question about how junk definition applies to an abandoned vehicle or a lifetime collection of vehicles. Who determines what is/is not junk?
- Staff – Williams: County code allows for up to 1,000 square feet of junk; would be at least 5 inoperable abandoned or wrecked vehicles. Visibility from road or off-site parcel is part of definition of junkyard. Provisions have been in place since 1988.
- Public – Cone: RCD has access to junk-specific funds for large item "pick up" days.

- Smith: Some of the violation cases should be reviewed by the CCAC. Sometimes it is neighbor against neighbor. People put their junk where the neighbor could see the junk. Need to actually see some of the files to get a better handle on what we're trying to do.
- Staff – Miranda: Standard practice is to work with the property owners. Sometimes they can move the junk and obtain compliance. Sometimes they can consolidate their storage piles and obtain compliance. Files are labor intensive. If you want, we can put something together.
- Collins: When you tell someone they can move it or build a fence, what's the objection?
- Staff – Miranda: "It's my property, it's my stuff, and I'm not moving it." Some comply. 20%.
- Woblesky: Junk should be better defined. As well as what it is not. Could reduce the concern.
- County will provide pictures of junk. Can provide slide show at next meeting.
- Woblesky: Maybe say what junk is not.
- Staff – Williams: Do you want us to come back with a list of what we come across that is junk? The most important thing is to have definitions that we all understand the same way. Rules that we've all accepted through a public process that we all live by.
- Discussion ensued. Staff offered presentation including examples and slide show.
- Collins: What is not junk. Items for a business. Items behind a fence. More clarification is needed.
- Rhodes: Distinguish between public and private nuisances. Code compliance staff should not handle those Environmental Health cases that state law says are EH.
- Staff – Miranda: I don't do theirs; they don't do mine. To separate those two isn't practical.
- Menetrey: When you try to define junk, it's tough, but it's obvious when you see it.

Next steps: CCAC and public to come up with lists of what is and is not junk. Staff to provide some other jurisdictions' definitions of junk.

5. Discussion/Possible Recommendation regarding Draft Civil Penalty Amnesty Program

Woblesky introduced item as carryover from last meeting, including items provided in agenda packet. Compiled homework and takeaways into 27 bullet points. Need to talk about how to move forward.

Discussion included the following points:

- Woblesky: Review of bullet points, including, tiers for the program, verification that the violations are real, possible waiver of fees. Looked at amnesty programs from other jurisdictions.
- Collins: City of Rialto Amnesty Program allowed fees to be waived if project is completed successfully through final inspection. Good motivation for compliance and easy to understand.
- Collins: San Mateo Program provides low-cost loans at 3% over 15 years. Would be good program if we get fund going to help support activities.
- Public – Cone: Whatever amnesty program is pursued – program shouldn't be launched immediately upon adoption but give time to advertise availability and then launch program.
- Public – Wright: Would be good to reduce tipping fees at dump if someone is cleaning up their property.
- Woblesky: Some funds will be available via ARPA. These could be used to offset tipping fees and other code compliance projects.
- Staff – Miranda: Could make the program a long-term policy instead of a short-term amnesty program. Remove time limits. MCC 15.10.260 requires civil penalties.

- Woblesky: We shouldn't be talking about penalties that have never been used before. A huge roadblock. Feels like a Trojan Horse. Doesn't belong under the umbrella of amnesty. Doesn't make sense.
- Staff – Miranda: That section of code has different sections, commercial, residential violations. Vacation rentals we play cat and mouse for years. The option is court. Marijuana has to be dealt with. Commercial production of marijuana puts it under the commercial penalties. Landlord violations put them under commercial. Our code has tons of loose ends. We're going into a growth season.
- Rhodes: Illegal marijuana grows are excluded from the amnesty program. Section 15.10.260 is still available for marijuana violations despite an amnesty program. But for non-marijuana violations, that code is a stick. By contrast, the Rialto example leads toward a healthier community, not further alienation.
- Woblesky: CCAC shouldn't even be talking about penalizing violators.
- Collins: CCAC wants to give violators a carrot to complete resolution of their violations. Maybe can't give all dollars back, but whatever we can give back would incentivize completion.
- General discussion that there is a difference between penalty dollars and permit fee dollars.
- Menetrey: Would be awesome to explore what Cone said about grant funding to assist with some fees and provide some incentives.
- Public – Cone: There is a situation where property owners may not be on the active code compliance case list, but they are fearful about coming forward. Whatever program is developed, should be applicable to these situations too. Owners not on the list should be able to participate.
- Menetrey: That is a tragic situation when folks buy a property and then they get a letter or try to get a TOT permit. The buyer was unsuspecting. There's due diligence involved. But when this comes back to the Board to incentivize folks without penalizing them because they were unaware. Difficult situations when the new owner doesn't know that there were violations.
- Rhodes: We've all overlooked the exclusions in 15.10.260.E, but they must be taken into consideration. If violation pre-existed purchase and no notice, that property owner is not subject to fines. So eliminating fines doesn't give these people any motivation to correct. Need a carrot.
- Public – Cone: There is a window of time during which the County failed to file any Notices. These property owners should have zero penalties. It was the county's failure. They were not on notice. Would like to know time – from when to when – that County was not filing these Notices.
- Woblesky: Do we know what the range is?
- Staff – Miranda: Notices have been filed since 1993, going back to 1993. Were filed as "notices of non-complying structures." Should have been filed as "notices of non-compliance." That had been an issue. Since January of last year, we have been consistently filing. The latter affects title. That mechanism is working for its intended purpose. We include the Notice of Intent now, spells out what the violation is, and how to resolve it.
- Public – Cone: Does that mean that everything prior to January needs to be looked at to determine if the County failed its due diligence? Do property owners need to be released from that?
- Rhodes: If no Notice of Existence, as required in MCC 15.10.260.E, is ever mailed, how can the 30-day period ever be triggered?
- Staff – Miranda: We have been filing a Notice of Noncompliance since January. We try to resolve it before we file it.
- Staff – Willis: A Notice of Existence of Nonconforming Structure.

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- Staff – Miranda: There is some conflict in the code. We've been sending out a letter before we go.
- Rhodes: When did the letters start?
- Staff – Miranda: Probably mid last year.
- Rhodes: So against these property owners, you don't have a stick. So we need a carrot.
- Staff – Miranda: Our code has some conflicts. It's always case by case. Every case is different.
- Public – Cone: Gave example of property owner who is a victim of the County's failure to file.
- Public – Marsh: If new buyer is purchasing without realtor, will they find out if hasn't been filed?
- Staff – Miranda: If they do their due diligence. We are working with Menetrey on publicizing the process. A cash transaction would need to do their due diligence. Would not automatically be notified.
- Smith: Need clarification on properties that maybe had a marijuana grow. How do new owners who never were pot growers get it off?
- Staff – Miranda: I just took ten of those off yesterday. Looked at individually. Every case is different.
- Public – Wright: Majority of people who live in this county are in poverty and cannot afford \$100 per day. It's extortion. The Board unanimously adopted this system. It's ridiculous.
- Woblesky: In the 2020 census, the average annual income of county residents \$28,000.
- Menetrey: A fine is scary, but the fines won't apply if property owner responds to the letter and works with county.
- Woblesky: We're trying to work on an amnesty program that incentivizes people to fix their issues.
- Rhodes: When County Code Amendment No. 2019-218 went before the Board in 2020, Supervisor Menetrey voted against it. And 2 of the other supervisors who were on that Board are no longer on the Board. This board has not been treating the public the same way the prior Board did. This Board deserves more credit. The way the prior code was written, the fines doubled after the 30th day. Required that fines be paid prior to appeals process. Also included fines in the lien amount, which is not allowed by state law. There were bad feelings created by the prior Board. At the second reading, all 5 voted against it. MCC 15.10.260 was adopted in 2010 and apparently never implemented. No one can say that the current sitting Board isn't willing to create better relationships with the community and try to solve these real problems. No one can say that the sitting Board of Supervisors is not interested in creating better relationships with the community. They are trying to solve these real problems.
- Woblesky asked for member or public comments. None.

Homework – how do CCAC members envision an amnesty program? Submit in writing. What is junk and what is not junk? Should the “amnesty” provisions be a long-term policy or short-term program?

Member Collins to talk with City of Rialto to see how their program worked.

6. Correspondence

None

7. Discussion/Possible Direction regarding Future CCAC Agenda Items.

Items already scheduled for 5/18/22 (Meeting #9):

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- Community Education and Communication (sample brochures from Smith)
 - White Board Discussion on CCAC Next Steps and Possible Direction; make sure Board of Supervisors is on board with general direction of CCAC
 - Review Memorandum - Request to the Board of Supervisors regarding ARPA Funds for Code Compliance Activities. Will touch bases with Cone about her potential funding source.
 - Squatters – on parcels where title to property is not clear
 - City of Rialto amnesty program report - Collins
 - Voucher program for landfill - Cone
 - Santa Cruz limited immunity permit program - Kemp
8. **Persons wishing to speak on a matter not on the agenda, but within the jurisdiction of the committee.**

None

9. Adjourn

Motion by Collins to adjourn meeting at 4:18 p.m.

Seconded by Smith.

Motion passed unanimously.