



Mariposa County

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222
5100 Bullion Street
<http://www.mariposacounty.org/>



MILES MENETREY, CHAIR
WAYNE FORSYTHE, VICE-CHAIR
ROSEMARIE SMALLCOMBE
SHANNON POE
DANETTE TOSO

DISTRICT V
DISTRICT IV
DISTRICT I
DISTRICT II
DISTRICT III

BOARD OF SUPERVISORS ACTION SUMMARY MINUTES SEPTEMBER 18, 2023

A. 9:00 AM Called to Order

Chair Menetrey called the meeting to order.

Attendee Name	Title	Status	Arrived
Rosemarie Smallcombe	District I Supervisor	Present	9:00 AM
Shannon Poe	District II Supervisor	Present	9:00 AM
Danette Toso	District III Supervisor	Present	9:00 AM
Wayne Forsythe	District IV Supervisor	Present	9:00 AM
Miles Menetrey	District V Supervisor	Present	9:00 AM

B. Pledge of Allegiance

Chair Menetrey led the pledge.

C. Joint Study Session

10:01AM Chair Menetrey recessed the Board of Supervisors to join the round table meeting with the Code Compliance Advisory Committee (CCAC).

10:02 AM Karen Woblesky Called the CCAC to order.

Danielle Bondshu/ Clerk of the Board made an announcement about the use of the provided microphones to all attending the meeting.

10:04 AM CCAC recessed to join the round table meeting.

10:04 AM Chair Menetrey Began the Joint Meeting and gave background information about the CCAC.

1. Planning

Discussion: Code Compliance Advisory Committee (CCAC) founding, purpose and intent

Karen Woblesky/Member of the Code Compliance Advisory Committee (CCAC) gave a staff report and led the discussion on the CCAC founding, purpose, and intent. No public comment. Gabriel Edwards/Membr of CCAC gave a staff report about Resolution 20-331. Ms. Woblesky asked the Board what they wanted to see the CCAC work on.

Discussion ensued between the Board and CCAC. No Direction Given. Moved onto Item 2.

2. **Planning**

Receive the Annual Report Highlights

10:41 AM Ms. Woblesky gave the Highlights report. No Public comment.

RESULT: PRESENTATION HELD

3. **Planning**

Receive an Informational Presentation of the CCAC Review and Summary of Code Enforcement options and 2019-218 Code Amendments from CCAC members

10:41 AM Colleen Rhodes/Member of CCAC, gave informational presentation on abatements and fines. Discussion ensued between the Board and CCAC. Supervisor Smallcombe noted, "We need to have some teeth." Further, noting there are some residents that are not willing to cooperate with Code Compliance. Ms. Rhodes noted the possibility of criminal prosecution, making violations a misdemeanor. Discussion of taking the information provided by the CCAC to a third party and have it changed into a legal document occurred. Chair Menetrey rescinded the option of taking the information to a third party.

Public comment was received by Marcia(?)/resident, who noted the committee is a highly educated group of people. Lorraine Freeman/Resident, who noted, the CCAC has done an amazing job, but the biggest problem is communication issues. Chair Menetrey stated the work that has been done by the committee is wonderful and requested the CCAC to develop recommendations for the Board to implement.

RESULT: PRESENTATION HELD

1:06 PM Chair Menetrey recessed for lunch, noting they would reconvene at 2:00 PM.

2:08 PM Chair Menetrey reconvened the joint meeting.

4. **Planning**

Receive an Informational presentation and discussion regarding CCAC Memorandum No. 3 Findings and Recommendations Phase I Document

Ms. Woblesky and Lydia Clary/Member of the CCAC, gave an informational presentation. Ms. Woblesky gave a report on Findings and Recommendations. No public comment was received.

RESULT: PRESENTATION HELD

5. **Planning**

Discussion and Direction on CCAC Next Steps

2:43 PM Discussion and Direction ensued between the Board and CCAC.

3:03 PM Supervisor Forsythe left the meeting.

Debbie Willis/ Building Department Head, noted she had not heard anything about the safety of her staff in this discussion.

3:06 PM Supervisor Smallcombe left the meeting.

Supervisor Poe noted how California Codes are vague and wanted to know if they could be changed at all. Mr.

Edwards advised California Law leaves space open to interpretation by the County. He also noted the root of the issue was lack of experience and training.

3:17 PM Ms. Slenders stepped away, and Danielle Bondshu/Clerk of the Board took over as clerk until 3:26 PM when Ms. Slenders returned.

Ken Melton/ Member of CCAC, requested clarification on what the Board wanted to see from the CCAC. Chair Menetrey advised, the development of policy, program support, the staff, fact-finding and to provide feedback to the Board of Supervisors. Chair Menetrey requested the CCAC to bring a recommendation to the board and it will be discussed, and directions will be given.

DIRECTION: The Board directed the Code Compliance Advisory Committee to bring their recommendations to the Board for discussion, direction, and possible approval.

RESULT: DIRECTION GIVEN

A. Adjournment

3:52 PM Ms. Woblesky adjourned the Code Compliance Advisory Committee meeting.

3:52 PM Chair Menetrey adjourned the Board of Supervisors meeting.

Respectfully submitted,

Katherine Slenders
Deputy Clerk of the Board II

Miles Menetrey
Chair, Board of Supervisors



MARIPOSA COUNTY

Board of Supervisors



MEETING: September 18, 2023
TO: The Board of Supervisors
FROM: Steve Engfer, Planning Director
RE: Discussion: Code Compliance Advisory Committee (CCAC) founding, purpose and intent

RECOMMENDATION AND JUSTIFICATION

Discussion with the Board members regarding the founding, purpose and intent of the Code Compliance Advisory Committee from the Committee (CCAC) members' perspectives.

BACKGROUND AND HISTORY OF BOARD ACTIONS

Board Resolution No. 2021-331 June 8, 2021 Establishing the Code Compliance Advisory Committee.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

N/A

FINANCIAL IMPACT

N/A

ATTACHMENTS

1. CCAC Final BOS PP Presentation
2. CCAC - Background and Purpose of CCAC Memo
3. Resolution 21-331
4. Resolution 21-682
5. 4-18-23, CCAC 2023 Annual Report

Special Board of Supervisors Meeting

September 18, 2023

Code Compliance Advisory Committee (CCAC)

Established by BOS Resolution 2021-331

Purpose, Tasks, and Intent

Purpose and Tasks of the CCAC per Res. 2021-331

- Develop recommendations to the Board of Supervisors for an effective code compliance process and program.
- Develop recommendations for innovative public policy and programs that address residents' needs while also mitigating alleged violations.
- Support the work of staff in the conduct of fact finding and data gathering necessary to the CCAC to develop informed recommendations.
- Provide periodic assessment and evaluation of, and feedback to the Board of Supervisors regarding the success of an amended code compliance process and programs.

Memo to CCAC from Sarah Williams, Former Planning Director

Code Compliance Issues Identified Include:

- More than 500 violations going back to the 1990's
- Tracking/combining both violations and complaints on a rolling basis
- Per Code Compliance Staff Statements: 1 out of 4 people with violations who were contacted had no idea that they had a violation; and 1 out of every 3 people with violations who were contacted thought their violation had been taken care of.
- Noticing to property owners has been inconsistent.
- Poor communication and dissemination of information to Mariposa residents.
- Haphazard method of transferring building violations to code compliance.
- The County already has existing tools and components with “teeth” on the books that haven't been used.
- Inaccurate belief that the County's Code Compliance “hands are tied” and public complaints can not be resolved by the County.

California Code Enforcement Options & Code Amendment 2019-218

CCAC Findings and Recommendations

Memorandum to the Board of Supervisors

CCAC Recommendations

- Comprehensive and Cooperative Approach to Code Compliance
- Utilize and Amend Existing Mariposa County Codes
- Communication; Public Engagement; Public Education
- Build functional internal business processes for Multiple Pathways Towards Resolution
- Stepped Approach; Resolve at Lowest Level Possible
- Collaborative; Change of Culture

Discussion regarding Next Steps

Discussion with the Board of Supervisors and the
CCAC

Questions?

Thank you.



MARIPOSA PLANNING

COUNTY OF MARIPOSA

5100 BULLION STREET • POST OFFICE BOX 2039

MARIPOSA, CALIFORNIA 95338-2039

209 . 742 . 1215 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

MEMORANDUM

Date: February 23, 2022

To: Code Compliance Advisory Committee (CCAC)

From: Sarah Williams, Director

Topic: Review Background and Purpose of CCAC; Possible Direction to Staff Regarding Options for Moving Forward (Next Steps)

At the February 2, 2022 CCAC meeting, member David Breemer asked a number of questions and expressed concerns. Breemer stated that there has not been enough direction from the Board of Supervisors about what kind of recommendations the CCAC should be making. The topic of code compliance is so broad:

- Does the Board want us to make a recommendation on rewriting code?
- Is the Board interested in adopting a new administrative citation process?
- What new mechanism is the Board interested in?
- How much “teeth” does the Board want Code Compliance staff to have?
- The CCAC shouldn’t be doing work that the Board isn’t interested in.
- What are the Board’s priorities?
- What does the Board want the CCAC to solve?

As a result of these concerns, which were shared by some other CCAC members, staff has prepared this memorandum for background and perspective. The memo is organized with the following sections:

- ONE: History**
- TWO: Summary of Board’s Actions and Directions**
- THREE: Options for Moving Forward**
- FOUR: CCAC Educational Program**
- FIVE: Questions and Answers**

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

SECTION ONE: HISTORY

Planning staff has identified the need for amendments to the code compliance procedures since at least 2014. Current procedures are not routinely effective in compelling compliance (not effective 45% of the time). Non-complying development and uses are increasingly impacting neighboring property owners, property values, environmental quality, wildland fire risk and public safety. There has been increasing and continuing concern expressed to Board members from impacted neighboring property owners.

The CCAC should know the history of the Board's formal discussions and actions relative to this issue, to plan a successful route forward.

MAY 19, 2020: Staff scheduled a packet of code amendments for public hearing for County Code Amendment No. 2019-218, to establish provisions in code for Administrative Citations and Abatement of Public Nuisances. The proposal also included adoption of portions of the 2018 International Property Maintenance Code (IPMC).

There was significant public concern expressed with the items, because of COVID restrictions on public gatherings. Staff withdrew the items prior to consideration by the Board, due to COVID restrictions on public gatherings.

Staff Conclusion: ***COVID delayed the Board's consideration of County Code Amendment No. 2019-218.***

OCTOBER 20, 2020: Staff scheduled a packet of amendments for public hearing for County Code Amendment No. 2019-218, to establish provisions in code for Administrative Citations and Abatement of Public Nuisances. The IPMC proposal was removed from the project description. The hearing was well attended by the public and there was significant written input provided to the Board. Most speakers were vehemently opposed to the project. Similarly, most written input expressed strong opposition to the project.

The Board adopted Resolution No. 2020-631 adopting an environmental determination and approving the project. The vote was 4 ayes and 1 nay (the District V Supervisor opposed the action).

The Board waived the first reading and introduced four ordinances to amend Titles 1, 3, 8 and 17 (step 1 in ordinance process) (*NOTE: see next page, for summary details of the proposed amendments to each of these titles*).

NOTE Adopting an ordinance is a multi-step process which includes:

- 1) waive first reading and introduce ordinance,
- 2) waive second reading and adopt ordinance (occurs 2+ weeks following first reading and introduction), and
- 3) ordinance becomes effective 30 days following adoption.

The Ordinance Amending Title 1: Proposed to add Chapters 1.40 and 1.42 to Title 1 (**General Provisions**) to establish authority, provisions, procedures and penalties for administrative citations and nuisance abatement. Appeal mechanisms are also established.

The Ordinance Amending Title 3: Proposed to add Sections 3.36.220 and 3.36.230 to Chapter 3.36 of Title 3 (**Revenue and Finance**) to establish: 1) County authority to choose which alternative enforcement procedure or procedures to use on any case; 2) employees are not personally liable for damage that may occur as a result of any act or omission in the discharge of work duties, and 3) County right to not process applications or grant permits to properties on which there is an active code compliance case, unless the action is necessary to obtain compliance.

The Ordinance Amending Title 8: Proposed to amend Chapter 8.56 of Title 8 (**Health and Safety**) to ensure consistency with the Ordinance amending Title 1 described above (Chapters 1.40 and 1.42). Removes most of the current enforcement procedures within Chapter 8.56 and relies on the enforcement procedures being added to Title 1 as described above.

The Ordinance Amending Title 17: Proposed to add Sections 17.144.110 and 17.144.120 to Chapter 17.144 of Title 17 (**Zoning**) to establish: 1) County authority to choose which alternative enforcement procedure or procedures to use on any case; 2) employees are not personally liable for damage that may occur as a result of any act or omission in the discharge of work duties, and 3) County right to not process applications or grant permits to properties on which there is an active code compliance case, unless the action is necessary to obtain compliance.

Staff Conclusion: *In October of 2020, the Board of Supervisors, on a 4 – 1 vote, supported amending code to establish an Administrative Citation process and an Abatement of Public Nuisance process for the purpose of more effective compliance procedures.*

Note: The Supervisors for Districts 2 and 4 have changed since this action.

NOVEMBER 10, 2020: Staff scheduled a discussion and direction item regarding optional procedural actions for County Code Amendment No. 2019-218. Normally, Step 2 in the ordinance process would've been scheduled, however this item was scheduled because (quote from staff report):

“There has been significant and continued public opposition to the Board’s preliminary action. There has been misinformation circulating regarding the project. There are threats of referendum action and recall actions. There are threats of legal action. There are defamatory attacks on staff. None of this is healthy for the community and the county. Trying to start a new county program with this level of community angst would not be positive.”

Four procedural options were presented, including

- Option 1 – “Stay the Course” and complete ordinance adoption process.
- Option 2 – “Hit Pause” and pursue a facilitated process for increasing communications and public interaction regarding issue (citizens’ committee).
- Option 3 – “Drop the Project” and deny the ordinances; continue to rely on current codes and laws.
- Option 4 – “Review Chapter 8.56” and potentially pursue amendments to address commercial marijuana grows.

The Board chose Options 2 and 4.

The Board also denied the four ordinances to amend Titles 1, 3, 8 and 17, which stopped the processing of County Code Amendment No. 2019-218.

Staff Conclusion: *The Board wasn’t interested in amending compliance procedures with the significant amount of public outcry (including threats) being expressed.*

The Board was still interested in increasing the effectiveness of code compliance efforts, but only if committee process was pursued to increase public communications, public interactions and (hopefully) public support.

The Board was interested in aggressively pursuing illegal marijuana operations using current resources.

MARCH 16, 2021: Supervisor Sweeney scheduled a discussion and direction item regarding “Increasing Non-Compliance with Existing County Codes”.

The Board directed County Counsel to start moving forward aggressively on illegal marijuana grows utilizing current codes.

The Board directed the Planning Director to return with a proposal to form a citizen’s advisory group for code compliance.

Staff Conclusion: *The Board was interested in aggressively enforcing current codes for illegal marijuana, while establishing a citizen’s committee to facilitate public input.*

The Board did not want to delay enforcement of current codes while the committee process was being developed and pursued, recognizing that a committee process can be time consuming.

JUNE 8, 2021: The Board of Supervisors adopted Resolution No. 2021-331, establishing authority for the Mariposa County Code Compliance Advisory Committee.

Staff Conclusion: *The Board created a citizens’ committee to:*

1. ***Make recommendations for an effective code compliance process and program.***
[PURPOSE AND TASKS in Exhibit A, Resolution 2021-331];
2. ***Conduct research to understand issues and procedural options.***
[RESPONSIBILITIES in Exhibit A, Resolution 2021-331].
3. ***Determine if there are ways to make processes and programs more effective, which, in addition to code amendments could include innovative ways to assist residents using resources such as, but not limited to volunteer efforts, community organizations, grants or other funding sources.***
[RESPONSIBILITIES in Exhibit A, Resolution 2021-331].

AUGUST 17, 2021: The Board approved nine members to the Code Compliance Advisory Committee. There were twenty-three applicants for the positions.

Staff Conclusion: ***There was significant public interest in this committee.***

October 19, 2021: Supervisor Long scheduled a discussion and direction item regarding “Formulation of a Plan to Address the Crisis in Mariposa County Regarding Illegal Marijuana.”

The Board directed the CAO to schedule a roundtable discussion and workshop for the Board with the Sheriff, Planning, District Attorney and County Counsel to discuss what does or does not work relative to the enforcement of illegal marijuana grows, as well as potential solutions, with the aim of creating a strategic plan to address illegal commercial marijuana growing in Mariposa County.

Staff Conclusion: ***There was interest in a coordinated effort to address illegal marijuana operations.***

The roundtable is planned to be scheduled for March or April 2022.

OCTOBER 19, 2021: Supervisor Sweeney scheduled a discussion and direction item regarding “Code Compliance Processes and Determination of Required Resources”.

The Board directed the following items be returned to them:

- From Code Compliance a one-page summary of the current processes.
- From Planning, identification of the resources needed to address the code compliance problem.
- From the Sheriff, identification of the resources needed to address the abandoned vehicle problem.
- Building is directed to immediately start filing complaints with the California State License Board for any cases of contractors building without a license or without a permit.

Staff Conclusion: *The Board is interested in understanding the current code compliance process and making progress on code compliance efforts, while the CCAC's work is progressing.*

December 7, 2021: Planning scheduled a "Follow-Up Discussion and Direction Regarding Code Compliance Processes and Determination of Required Resources. Staff presented:

- Compliance process flowchart
- Excerpts from current code
- List of open code compliance cases

The Board directed staff to:

- Bring back an Amnesty Program for current code provisions for penalties in Title 15 (Planning/Building).
NOTE: This is the draft Amnesty Program scheduled for CCAC review at the CCAC meetings of February 2, 2022 and March 2, 2022.
- Bring back an ordinance to withhold permits on parcels with open cases (Planning/Building).
NOTE: This is the draft ordinance scheduled for CCAC review at the CCAC meetings of February 2, 2022 and March 2, 2022.
- Get extra help staff to go through list of outstanding code cases (Code Compliance).
NOTE: Extra help staff was hired on January 10, 2022.
- Research legality of levying fines without going to Court and withhold permits on non-complying parcels (County Counsel).
NOTE: County Counsel's office will reply directly to the Board of Supervisors regarding this request.

Staff Conclusion: *The Board did not want to delay enforcement of current codes, while the CCAC is meeting. The Board wants the list of outstanding code cases to be up to date. The Board wants to make sure that current code provisions for administrative penalties and proposed code provisions to withhold permits are legal.*

SECTION TWO: SUMMARY OF BOARD ACTION AND DIRECTION

Staff's conclusions regarding the Board's actions and directions (and priorities) over the last 18 – 24 months includes the following:

1. The Board recognizes the County's current code compliance procedures are not effective.
2. The Board is interested in more effective code compliance procedures, which could include both conventional procedures (such as administrative citation and nuisance abatement processes) and other innovative ways to assist residents.
3. The Board would like public support for whatever is proposed for more effective code compliance procedures and established the CCAC for the purpose of providing for and improving public communications and interactions regarding the issue.
4. The CCAC's tasks are established as objectives. The Board did not tell the CCAC what solution they needed to come up with.
5. The Board knows a citizen's committee process will take time.
6. The Board wants to continue pursuing code compliance cases using current procedures, while the CCAC work is being done.
7. The Board is particularly interested in pursuing compliance regarding illegal marijuana operations, due to community safety and environmental health issues.
8. Any action items related to code compliance should be routed through the CCAC for review and recommendation.

SECTION THREE: OPTIONS FOR MOVING FORWARD

Staff has identified the following potential options for moving forward (one or more could be pursued; other options could be identified):

OPTION A – Use Current Codes in Title 15, Buildings and Construction

- Develop recommendations to improve (or modify) use of current codes (such as penalty provisions currently in County Code Section 15.10.260, an Amnesty Program as provided for in County Code Section 15.10.260, and filing of Notices of Non-Compliance (for disclosure)).

NOTE: The Board of Supervisors already directed staff to pursue this portion of Option A.

- Establish 6 – 12-month period to “test” use of improved (or modified) procedures.
- If test period shows the processes are resulting in more effective and acceptable level of compliance, then no further work is necessary.
- If test period shows the processes are not resulting in more effective compliance, then pursue another option or options.

OPTION B – Innovative Alternatives

- Develop recommendations for innovative ways to assist residents with compliance work. This could include incentive-based options or financial assistance options or reliance on philanthropic organizations.
- Establish 6 – 12-month period to “test” effectiveness of use of innovative ways to assist.
- If test period shows the processes are resulting in more effective compliance, then continue with programs.
- If test period shows the processes are not resulting in more effective compliance, then pursue another option or options

OPTION C – Amend Current Codes for Marijuana in Title 8, Health and Safety

- Chapter 8.56 establishes provisions for Medical Marijuana Cultivation. It was adopted in 2014 and allows cultivations which exceed currently allowed State thresholds. Chapter 8.56 includes existing provisions for administrative (financial) penalties and nuisance abatement.
- Amend Chapter 8.56 to make it applicable to marijuana cultivation for medical or recreational purposes. This would provide staff with more effective code compliance processes for illegal commercial marijuana cultivations and processing operations.

- *NOTE: The Board of Supervisors already directed staff to pursue Option C.*

OPTION D – Administrative Citation Process

- This is a conventional compliance tool used throughout California and gives staff the ability to assess financial penalties to violators (after specific procedural steps are met). The potential for penalties would provide motivation to violators to address the violations.
- Study the previously proposed code amendments for establishing an administrative citation process.
- Compare the previous proposal with other successful codes used in similar (rural) jurisdictions.
- Develop recommendations for proposed code amendments for an Administrative Citation process.
- Recommend a one-year CCAC follow-up / review process for the program, to enable amendments to the program in the future if it isn't having the desired impacts (including detrimental impacts).

OPTION E – Nuisance Abatement Process

- This is a conventional tool used throughout California and gives staff the ability to pursue remediating a violation and billing the remediation costs to the property (after specific procedural steps are met). This would only be pursued in egregious situations when a property owner is not cooperative (not making progress to remediate the violation) and there is a serious public health threat.
- Study the previously proposed code amendments for establishing a Nuisance Abatement process.
- Compare the previous proposal with other successful codes used in similar (rural) jurisdictions.
- Develop recommendations for proposed code amendments for a Nuisance Abatement process.
- Recommend a one-year CCAC follow-up / review process for the program, to enable amendments to the program in the future if it isn't having the desired impacts (including detrimental impacts).

OPTION F – Schedule Discussion and Direction Item with Board of Supervisors

- The CCAC could direct staff to schedule a discussion and direction item with the Board of Supervisors, so CCAC members could address specific concerns with the Board, and potentially get specific direction from the Board.

OPTION G – Continue Education Program

- The CCAC could direct staff to schedule additional educational topics (See Section Four, below).

OPTION H – Other

- The CCAC could identify other actions to pursue Board direction (CCAC Purpose, Tasks and Responsibilities established in Resolution No. 2021-331).

SECTION FOUR: CCAC EDUCATION PROGRAM

The CCAC has conducted 4 meetings to date.

Because not all 9 CCAC members have the same background level of knowledge regarding code compliance processes and county government, the homework and agenda items to date have been primarily for the purpose of education (to get all members “up to speed” and to understand Mariposa County’s current code compliance circumstances for informed discussions), including:

- 1 – Existing County Codes Establishing Compliance Requirements
- 2 – Uniform Procedures for Complaints
- 3 – Compliance Handouts
- 4 – Sample Correspondence / Compliance and Forms
- 5 – Appeals Information / Forms
- 6 – County Code Compliance Information
- 7 – Brown Act Requirements
- 8 – Public Records Act (PRA) Requirements
- 9 – Local Government Structure
- 10 – Parliamentary Procedures for Meetings
- 11 – Mariposa County’s Code Compliance Process
- 12 – Mariposa County’s Marijuana Regulations
- 13 – Involvement of Building Department, Health Department, County Counsel, District Attorney and Assessor-Recorder in Code Compliance Process

Other educational / background items that have not yet been presented include:

- 14 – Administrative Citation Process (what it is / how it works)
- 15 – Nuisance Abatement Process (what it is / how it works)
- 16 – What happened during the public hearing process for County Code Amendment No. 2019-218?

17 – Table of Counties (what other counties do / use for compliance procedures)

18 – Local Case Compliance List

19 – Title Company Presentation (potential title issues associated with violations)

20 – Any other education presentations that will assist the CCAC in fully understanding how to best recommend an effective County Code Compliance Enforcement program.

The CCAC may give direction to staff regarding scheduling the additional education / background items at a future meeting.

SECTION FIVE: QUESTIONS AND ANSWERS

Based on this summary review, the following are staff's responses to Breemer's questions:

- Does the Board want us to make a recommendation on rewriting code?

Yes, potentially, if that is what is needed to provide for a more effective code compliance process.

- Is the Board interested in adopting a new administrative citation process?

Yes, potentially, if that is what is needed to provide for a more effective code compliance process.

- What new mechanism is the Board interested in?

The Board hasn't expressed any position regarding which specific mechanism(s) would be best to pursue. The Board created the CCAC to get public perspectives and a committee recommendation.

- How much "teeth" does the Board want Code Compliance staff to have?

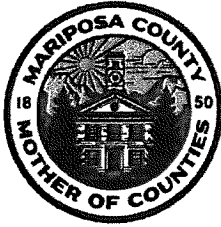
The Board wants the code compliance program to be effective, which will mean staff will have to have more "teeth" than they currently have.

- What are the Board's priorities?

Effective code compliance and public support.

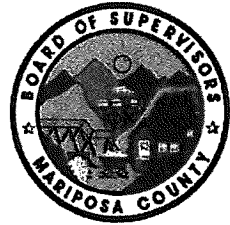
- What does the Board want the CCAC to solve?

The Board is seeking the CCAC's recommendations for an effective code compliance process which is supported by the public.



MARIPOSA COUNTY

Planning • 209-966-5151



RESOLUTION - ACTION REQUESTED 2021-331

MEETING: June 8, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Proposed Code Compliance Advisory Committee

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Establishing the Mariposa County Code Compliance Advisory Committee (CCAC) and Approving a Supplemental Questionnaire for CCAC Membership Applications.

Action is based on direction given to staff by the Board of Supervisors at their meetings on November 10, 2020 (following denial of County Code Amendment No. 2019-218 and discussion of procedural options) and March 16, 2021 (following discussion and direction regarding "increasing non-compliance with existing county codes").

RESULT:

The resolution establishes a 9-member citizens' advisory committee to the Board of Supervisors. The resolution establishes purposes and tasks, responsibilities, membership considerations for appointment, and other procedural requirements for the committee. The purpose of the committee is to make recommendations to the Board of Supervisors for potential amendments to code compliance procedures. The resolution also approves a supplemental questionnaire for committee membership application.

CONSIDERATIONS:

The draft documents presented for Board consideration were based on:

1. Other resolutions establishing advisory committees to the Board of Supervisors,
2. Discussion by the Board of Supervisors at their meetings on November 10, 2020 and March 16, 2021, and
3. Input from citizens who are interested in a collaborative process with the County to develop recommendations regarding code compliance procedures and alternatives.

PROPOSED NOTICING FOR CCAC MEETINGS:

The draft resolution (Exhibit A, Section 8a - 8f) contains requirements for noticing a CCAC meeting that exceed state law and local policy.

State law (The Brown Act) currently requires that an agenda be posted at the meeting location and on-line. Planning also routinely publishes advisory committee meeting notices in the *Mariposa Gazette* and has recently started posted notices in the

Yosemite Express as well.

NOTICING THIS ACTION BY BOARD:

This action by the Board was noticed in local newspapers, including the *Mariposa Gazette* and the *Yosemite Express*. This action was also noticed on-line. Finally, hard copy notices of this action were posted in sixteen (16) locations throughout the county.

NEXT STEPS:

If the Board establishes the CCAC, next steps will include the following:

1. Staff will notice vacancies on the committee.
2. Staff will receive applications from persons interested in serving on the committee.
3. Staff will schedule an item at a future Board meeting, for the Board to appoint members to serve on the committee. All applications will be presented to the Board for consideration.
4. Once appointments have been made, an initial meeting of the CCAC will be scheduled.

NOTE:

The original version of the resolution which was posted for public information included provisions for a social media coordinator (to be an officer of the committee). These provisions were removed from the resolution during legal review of the item, based upon the County's Website Video and Social Media Policy, adopted January 22, 2019. On page 4 of the policy, under "Policy Responsibilities", it states, "Department Heads will appoint a social media moderator within their department to manage the social media account and to ensure that appropriateness of content. The designated moderator should: Be a Mariposa County employee or contractor [emphasis added]; be familiar with Mariposa County policies; understand the scope of responsibility, and be appropriately trained regarding county regulations and policies to interact on behalf of a department." [Emphasis added.]

A citizen member of the CCAC would not qualify under the policy that requires that the moderator be either an employee or a contractor. In addition, it would be difficult to monitor "other Facebook pages" used by Mariposa residents to ensure that they are set up with no comments.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

November 10, 2020: The Board of Supervisors denied County Code Amendment No. 2019-218 and discussed procedural options.

March 16, 2021: The Board of Supervisors discussed and gave direction to staff regarding "increasing non-compliance with existing County Codes".

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Amend text within the resolution, including makeup of advisory committee, membership requirements, noticing requirements and/or tasks and responsibilities.

Negative action: Do not adopt resolution. No advisory committee for code compliance would be established.

FINANCIAL IMPACT:

No direct costs, although there is a staff time commitment to prepare educational and action items for the CCAC, and to staff the CCAC meetings.

ATTACHMENTS:

210608 Draft BOS Resolution Establishing Code Compliance Advisory Committee amended (PDF)

210517 Notice of Proposal to Establish Code Compliance Advisory Committee (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Tom Sweeney, District II Supervisors

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

Resolution
No 2021-331

**A Resolution establishing the Mariposa County Code
Compliance Advisory Committee (CCAC) and Approving a
Supplemental Questionnaire for Membership Applications**

WHEREAS, state law requires counties to prepare and adopt a General Plan to guide the future development of the county; and

WHEREAS, Mariposa County has an adopted General Plan; and

WHEREAS, Mariposa County implements the General Plan through local land use, development and permitting regulations in the Mariposa County Code, including zoning, building and environmental health regulations and marijuana regulations; and

WHEREAS, development codes are also established for the protection of public health and safety and for the protection of environmental quality; and

WHEREAS, Mariposa County is responsible for enforcement of these local regulations as well as state law; and

WHEREAS, Mariposa County Code establishes code enforcement procedures and requirements; and

WHEREAS, Mariposa County's procedures and requirements are not always effective in resolving code compliance matters; and

WHEREAS, there is an interest in pursuing amendments to the County's code compliance procedures and process to make the code compliance program more effective; and

WHEREAS, there is an interest in devising innovative public policy and programs that addresses residents' needs while also mitigating alleged violations; and

WHEREAS, the Board of Supervisors has considered the important role of collaboration between county staff, property owners, business owners and residents to research and develop recommendations for amended procedures and new policies and programs.

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors does hereby establish the Code Compliance Advisory Committee (CCAC) as an advisory body to the Board of Supervisors with purpose, tasks, responsibilities, and procedures as described in Exhibit A attached hereto and incorporated herein.

NOW THEREFORE BE IT FINALLY RESOLVED, that the Board of Supervisors does hereby approve a Supplemental Questionnaire for Membership Applications as shown in Exhibit B attached hereto and incorporated herein.

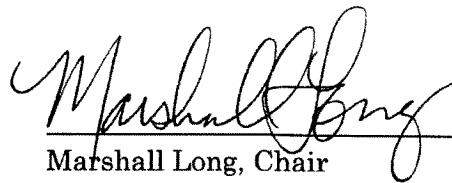
ON MOTION BY Supervisor Menetrey, seconded by Supervisor Sweeney, this resolution is duly passed and adopted this 8th day of June, 2021 by the following vote:

AYES: SMALLCOMBE, SWEENEY, LONG, FORSYTHE, MENETREY

NOES: NONE

EXCUSED: NONE

ABSTAIN: NONE



Marshall Long, Chair
Board of Supervisors

ATTEST:



René LaRoche
Clerk of the Board

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel

EXHIBIT A

BOARD OF SUPERVISORS Resolution No. 2021-331 Establishing the Mariposa County Code Compliance Advisory Committee

1. Purpose and Tasks

The purpose and tasks of the Mariposa County Code Compliance Advisory Committee (CCAC) shall be as follows:

- a. Develop recommendations to the Board of Supervisors for an effective code compliance process and program.
- b. Develop recommendations for innovative public policy and programs that address residents' needs while also mitigating alleged violations.
- c. Support the work of staff in the conduct of fact finding and data gathering necessary to the CCAC to develop informed recommendations.
- d. Provide periodic assessment and evaluation of, and feedback to the Board of Supervisors regarding the success of an amended code compliance process and programs.

2. Responsibilities

The responsibilities of the Mariposa County Code Compliance Advisory Committee shall be as follows:

- a. Review and understand local government structure (including but not limited to the roles and the authority of, and the relationships between the public, a citizens' advisory committee, County staff, the Planning Commission, and the Board of Supervisors).
- b. Review and understand existing Mariposa County Code provisions, including provisions for the Mariposa Planning Agency and code compliance, as well as adopted County policies related to code compliance.
- c. Review, understand and comply with the state's Ralph M. Brown Act (Brown Act) requirements.
- d. Review and understand state law requirements for code compliance activities at a local level.
- e. Review and understand due process requirements.

- f. Review and understand current county code compliance cases, including the status of current cases, why certain cases aren't being resolved, typical compliance issues, etc.
- g. Review and learn about what other similar or neighboring jurisdictions do for code compliance.
- h. Determine if there are other ways to make the current processes and programs more effective, which, in addition to code amendments could include innovative ways to assist residents using resources such as, but not limited to volunteer efforts, community organizations, grants or other funding sources.

3. Membership

The Code Compliance Advisory Committee (CCAC) shall be established with nine (9) voting members. Membership requirements or considerations include the following:

- a. Members shall reside in Mariposa County.
- b. Members shall take an interest in issues associated with code compliance procedures, code compliance processing and public education.
- c. Members may have special knowledge, expertise, or skills related to code compliance matters, including governmental procedures, county codes, development and construction permitting requirements, code compliance procedures and options, and/or legal matters. Such special knowledge, skills, or expertise is not mandatory to be appointed to the committee.
- d. The committee may call upon representatives of other organizations or departments, and the general public as resources on certain topics related to the purpose, tasks and responsibilities of the committee.

4. Term and Manner of Appointment

Appointments to the CCAC shall be made by the Board of Supervisors based on review of applications submitted on the county's standard application form and a supplemental questionnaire.

Initial appointment of committee members shall be as follows:

- Four (4) members: one (1) year terms
- Three (3) members: two (2) year terms
- Two (2) members: three (3) year terms

If the initial appointments are made mid-term, the appointments shall minimally be for the terms listed above [e.g. the "one (1) year terms" may actually be one (1) year and five (5) months terms or one (1) year and two (2) month terms].

After the initial appointments, all terms will be for two (2) year periods.

All terms shall expire upon the last day of February of the appropriate year.

The Board of Supervisors may remove at any time and without cause any member of the CCAC.

5. Participation By Member Required, Vacancy

If any member of the CCAC is absent (unexcused) for two (2) consecutively scheduled meetings, then that member may be removed from the CCAC by the Board of Supervisors, and the Board of Supervisors shall fill the vacancy for the unexpired term.

6. Selection of Officers

At its first meeting, the CCAC shall elect a Chair, Vice Chair and Secretary to serve a term of one (1) year or until the successor of each is appointed and qualified.

Following the initial appointment of officers, elections shall occur at the first meeting of each calendar year.

7. Duties of Officers

The Chair shall preside at all meetings of the CCAC and shall perform all the duties necessary or incidental to the office, including approval of the agenda topics for the meeting.

The Vice Chair is chair in the absence or inability of the chair to act.

The Secretary shall maintain notes and prepare meeting minutes for the approval of the CCAC.

8. Meetings and Quorum

The CCAC shall hold its first meeting at the call of the Planning Director or designee. The CCAC shall establish a meeting schedule deemed necessary by the CCAC to accomplish its purpose. The approved meeting schedule shall be posted for

informational purposes on the CCAC's webpage within Mariposa Planning's web page, as well as on the Mariposa Planning Facebook page.

A quorum shall be a majority of those appointed as voting members. A quorum is required to transact any CCAC business at a regular meeting or special meeting.

Notice of CCAC meetings shall be posted and published by County staff not less than seven (7) days prior to the date of the meeting at the following locations:

- a. Mariposa Planning Website page,
- b. Mariposa Planning Facebook page,
- c. The Mariposa County Government Center,
- d. Publication in the *Mariposa Gazette*,
- e. Other posted locations as determined by the CCAC, and
- f. The meeting location.

The Planning Director or designee may supplement (increase) required notification in any manner deemed appropriate for the content of the proposed agenda.

Meetings of the CCAC shall be subject to the provisions of the California Open Meeting Law (Brown Act).

9. Administration and Support

- a. County staff shall provide support to the CCAC. The Planning Director or designee shall be the lead member of County staff responsible for supporting the CCAC. The Planning Director or designee shall be empowered to call upon appropriate departments to provide information required to assist the CCAC in carrying out its designated purpose and tasks, and responsibilities.
- b. The Planning Director or designee shall be responsible for meeting notices, preparation and distribution of meeting support materials, and coordinating the meeting arrangements.
- c. If the CCAC does not appoint a secretary, the Planning Director or designee shall be responsible for preparation and publication of minutes for CCAC approval.
- d. The Planning Director or designee shall be responsible for digitally recording the meetings and for the archival storage of electronic recordings.

EXHIBIT B

BOARD OF SUPERVISORS Resolution No. 2021-331 Establishing the Supplemental Questionnaire for CCAC Membership Applications

NOTE: This form will be made into a "fillable" pdf document for ease of use.

Name:

Mailing address:

Email address:

Street (physical) address:

Telephone:

Supplemental Questions – please respond to the following questions to help us evaluate your qualifications for this committee.

1. Why are you interested in being appointed to the CCAC?
2. Do you agree with the purpose and tasks of the CCAC, which are to:
 - a. Develop recommendations to the Board of Supervisors for an effective code compliance process and program.
 - b. Develop recommendations for innovative public policy and programs that address residents' needs while also mitigating alleged violations.
 - c. Support the work of staff in the conduct of fact finding and data gathering necessary to the CCAC to develop informed recommendations.
 - d. Provide periodic assessment and evaluation of, and feedback to the Board of Supervisors regarding the success of an amended code compliance process and programs.

If you answered "no" to any of the above, please explain why:

3. If you are appointed as a member of the CCAC, do you accept the following established responsibilities:
 - a. Review and understand local government structure (including but not limited to the roles and the authority of, and the relationships between the public, a citizens' advisory committee, County staff, the Planning Commission, and the Board of Supervisors).

- b. Review and understand existing Mariposa County Code provisions, including provisions for the Mariposa Planning Agency and code compliance, as well as adopted County policies related to code compliance.
- c. Review, understand and comply with the state's Ralph M. Brown Act (Brown Act) requirements.
- d. Review and understand state law requirements for code compliance activities at a local level.
- e. Review and understand due process requirements.
- f. Review and understand current county code compliance cases, including the status of current cases, why certain cases aren't being resolved, typical compliance issues, etc.
- g. Review and learn about what other similar or neighboring jurisdictions do for code compliance.
- h. Determine if there are other ways to make the current processes and programs more effective, which, in addition to code amendments could include innovative ways to assist residents using resources such as, but not limited to volunteer efforts, community organizations, grants or other funding sources.

If you answered "no" to any of the above, please explain why:

- 4. Do you have any skills or special knowledge or expertise you could contribute to the CCAC efforts? What are those?
- 5. Are you able to devote time to attend meetings? CCAC Meetings may be conducted remotely or in person.
- 6. Are you able to devote time to review meeting packets ahead of meetings?
- 7. Is there any other information you'd like to share regarding your interest in being on this advisory committee?

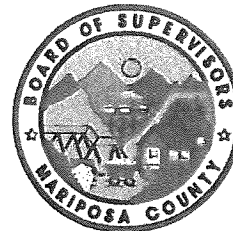
Signature

Date



MARIPOSA COUNTY

Planning · 209-966-5151



RESOLUTION - ACTION REQUESTED 2021-682

MEETING: December 21, 2021
TO: The Board of Supervisors
FROM: Sarah Williams, Planning Director
RE: Approve the Code Compliance Advisory Committee By-Laws

RECOMMENDATION AND JUSTIFICATION:

Approve the Code Compliance Advisory Committee (CCAC) By-Laws.

In accordance with Section 2.50.100.G of the Mariposa County Code, the Planning Director is responsible for the preparation of draft by-laws for the review and approval of the Planning Advisory Committees with final approval of the by-laws by the Board of Supervisors.

At their December 1, 2021 meeting the Code Compliance Advisory Committee recommended that the Board of Supervisors approve the attached by-laws.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None related to the CCAC's By-Laws. However, the Board of Supervisors has approved by-laws for various planning advisory committees in the past. These previously adopted by-laws served as a template for preparation of the draft CCAC's by-laws.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board of Supervisions could make modifications to the draft by-laws or if the Board does not approve the by-laws they would be referred back to the CCAC for further review.

ATTACHMENTS:

211201 CCAC Approved Draft By-Laws (PDF)

RESULT: ADOPTED AS AMENDED BY CONSENT VOTE [UNANIMOUS]

MOVER: Wayne Forsythe, District IV Supervisor

SECONDER: Miles Menetrey, District V Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

Mariposa County Code Compliance Advisory Committee

By-Laws

Article I Name of Organization

Section 1: The name of this organization shall be the Code Compliance Advisory Committee (hereinafter referred to as “the CCAC” or “CCAC”), as authorized by Mariposa County Resolution No. 2021-331.

Article II Purposes and Tasks of the CCAC

Section 1: The CCAC has the following purposes and tasks:

- a. Develop recommendations to the Board of Supervisors for an effective code compliance process and program.
- b. Develop recommendations for innovative public policy and programs that address residents’ needs while also mitigating alleged violations.
- c. Support the work of staff in the conduct of fact finding and data gathering necessary to the CCAC to develop informed recommendations.
- d. Provide periodic assessment and evaluation of, and feedback to the Board of Supervisors regarding the success of an amended code compliance process and programs.

The CCAC is advisory to the Board of Supervisors and, as such, shall not take part officially in, nor does it lend its influence to, any political causes or issues.

Section 2: The CCAC has the following responsibilities:

- a. Review and understand local government structure (including but not limited to the roles and the authority of, and the relationships between the public, a citizens’ advisory committee, County staff, the Planning Commission, and the Board of Supervisors).
- b. Review and understand existing Mariposa County Code provisions, including provisions for the Mariposa Planning Agency and code compliance, as well as adopted County policies related to code compliance.
- c. Review, understand and comply with the state’s Ralph M. Brown Act (Brown Act) requirements.
- d. Review and understand state law requirements for code compliance activities at a local level.
- e. Review and understand due process requirements.

- f. Review and understand current county code compliance cases, including the status of current cases, why certain cases aren't being resolved, typical compliance issues, etc.
- g. Review and learn about what other similar or neighboring jurisdictions do for code compliance.
- h. Determine if there are other ways to make the current processes and programs more effective, which, in addition to code amendments could include innovative ways to assist residents using resources such as, but not limited to volunteer efforts, community organizations, grants or other funding sources.

Article III Members

Section 1: The Code Compliance Advisory Committee (CCAC) shall be established with nine (9) voting members. Membership requirements or considerations include the following:

- a. Members shall reside in Mariposa County.
- b. Members shall take an interest in issues associated with code compliance procedures, code compliance processing and public education.
- c. Members may have special knowledge, expertise, or skills related to code compliance matters, including governmental procedures, county codes, development and construction permitting requirements, code compliance procedures and options, and/or legal matters. Such special knowledge, skills, or expertise is not mandatory to be appointed to the CCAC.

Each voting member has one vote and no proxy.

Section 2: The CCAC may call upon representatives of other organizations or departments, and the general public as resources on certain topics related to the purpose, tasks and responsibilities of the CCAC.

Section 3: Appointments to the CCAC shall be made by the Board of Supervisors. Initial appointment of CCAC members shall be as follows:

- Four (4) members: one (1) year terms
- Three (3) members: two (2) year terms
- Two (2) members: three (3) year terms

If the initial appointments are made mid-term, the appointments shall minimally be for the terms listed above [e.g. the "one (1) year terms" may actually be one (1) year and five (5) months terms or one (1) year and two (2) month terms].

After the initial appointments, all terms will be for two (2) year periods.

All terms shall expire upon the last day of February of the appropriate year.

The Board of Supervisors may remove at any time and without cause any member of the CCAC.

Section 4: CCAC members shall provide advance notice to the Chair if they are unable to attend a meeting. The Chair shall determine if the absence is excused or un-excused.

If any member of the CCAC is absent (unexcused) for two (2) consecutively scheduled meetings, then that member may be removed from the CCAC by the Board of Supervisors, and the Board of Supervisors shall fill the vacancy for the unexpired term.

Article IV Officers

Section 1: At its first meeting, the CCAC shall elect a Chair, Vice Chair and Secretary to serve a term of one (1) year or until the successor of each is appointed and qualified. Members will assume office immediately at that time.

Following the initial appointment of officers, elections shall occur at the first meeting of each calendar year.

Section 2: The Chair shall preside at all meetings of the CCAC and shall perform all duties necessary or incidental to the office, which may include approval of the agenda topics for all such meetings.

Section 3: The Chair (or designee) shall represent the CCAC at other public meetings and community events. The Chair shall only provide such representation based upon action taken by the CCAC at a regularly scheduled meeting of the CCAC in which a quorum was present.

Section 4: The Vice-Chair is Chair in the absence or inability of the Chair to act. The Secretary is Chair in the absence or inability of both the Chair and Vice-Chair to act.

Section 5: The Secretary shall prepare draft minutes of the meetings. The Secretary shall provide draft meeting minutes to the Planning Department within one week after the meeting. The Secretary shall provide final (approved) meeting minutes to the Planning Department within one week of approval.

Section 6: The CCAC may request that the Planning Director (or the Planning Director's designee) serve as Secretary, provided that the Planning Director has staff and resources available for the purpose of preparing brief minutes. The Planning Director (or designee) shall be responsible for posting and distributing the agenda and agenda packets. The Planning Director (or the Planning Director's designee) is responsible for recording the meeting and the archival storage of the audio.

Article V Ad-Hoc Study Committees

Section 1: At its discretion, and by a majority vote, the CCAC may appoint members of the CCAC to study specific items as determined by the CCAC. The membership of any ad-hoc study CCAC may not comprise a quorum of the CCAC.

Section 2: Ad-Hoc Study Committees may make recommendations and submit them to the CCAC for review and possible action.

Section 3: Ad-Hoc Study Committees may include participants who are not CCAC members, but whose participation is deemed valuable to the subject being studied.

Article VI Meetings

Section 1: All meetings of the CCAC and CCAC's subcommittees are open to the public.

Members of the public may bring matters to the attention of the CCAC, express opinions and request action. No action will be taken on items not on the agenda. Meetings and noticing of meetings of the CCAC shall be subject to the provisions of the California Open Meeting Law (Brown Act) and shall be conducted in accordance with Rosenberg's Rules of Order. Meetings that are not noticed correctly may not occur and must be rescheduled to a future date.

Section 2: Meetings shall be held at the call of the Chair or at the request of the majority of the CCAC members. At its first meeting, the CCAC shall establish a meeting schedule deemed necessary by the CCAC to accomplish its purpose. The approved meeting schedule shall be posted for informational purposes on the CCAC's webpage within Mariposa Planning's web page, as well as on the Mariposa Planning Facebook page. The approved meeting schedule may be modified after approval, with majority vote of the CCAC. The modified meeting schedule shall be posted in the same manner as required for the originally approved meeting schedule.

If regular monthly meetings are not needed, meetings may be scheduled on an as-needed basis. Scheduling of "as-needed" meetings shall be coordinated by the Planning Director (or designee) and the Chair.

Section 3: Notice of CCAC meetings shall be posted and published by County staff not less than seven (7) days prior to the date of the meeting at the following locations:

- a. Mariposa Planning Website page,
- b. Mariposa Planning Facebook page,
- c. The Mariposa County Government Center,
- d. Publication in the *Mariposa Gazette*,
- e. Other posted locations as determined by the CCAC, and
- f. The meeting location.

The Planning Director or designee may supplement (increase) required notification in any manner deemed appropriate for the content of the proposed agenda.

Section 4: An agenda shall be posted at the meeting location at least 72 hours prior to any regular meeting by the Chair (or designee), if in-person meetings are conducted.

Section 5: A quorum for a duly held meeting and for action on any item shall consist of a majority of the voting CCAC members, normally calculated as half the membership plus one. If a quorum is not present within ten minutes of the advertised meeting start time, committee members are to exit the meeting place and disperse to avoid an accidental, unauthorized meeting.

Section 6: Meetings of the CCAC are to be held in public places which are in compliance with the Americans with Disabilities Act.

At the discretion of the Chair, or upon request of a CCAC member, public input on matters being considered by the CCAC may be time-limited in order to allow for participation from all members of the public present who would like to speak, or for adequate deliberation by the CCAC before making a decision.

Section 7: Every decision made by a majority of the members present at a duly held meeting, at which a quorum is present, shall be regarded as a decision of the entire CCAC.

Section 8: An item on the agenda may, unless otherwise provided by ordinance, be continued to the next scheduled or to a subsequent meeting of the CCAC, the date, time, and location to be specified. A regular meeting will be adjourned when all of the agenda items have been discussed or continued to another meeting.

Article VII Correspondence

Section 1: Correspondence received by any CCAC member regarding matters being considered by the CCAC may be forwarded to Planning staff and distributed to all CCAC members.

Section 2: Upon receipt of any correspondence directed to the activities or responsibilities of the CCAC, the correspondence shall be placed on the agenda of the next regularly scheduled meeting, time permitting, for discussion by the CCAC.

Section 3: The Chair (or designee) shall reply to any correspondence or refer the correspondence to the Mariposa County Planning Commission or Board of Supervisors, based upon action taken by the CCAC at a meeting in which a quorum is present.

Article VIII Amendments

Section 1: These by-laws and any amendments to these by-laws may only be reviewed at a regular meeting of the CCAC.

Section 2: These by-laws and any amendments approved by the CCAC shall be submitted to the Board of Supervisors for review and final approval.



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

**MILES MENETREY, CHAIR
WAYNE FORSYTHE, VICE-CHAIR
ROSEMARIE SMALLCOMBE
SHANNON POE
DANETTE TOSO**

**DISTRICT V
DISTRICT IV
DISTRICT I
DISTRICT II
DISTRICT III**



MARIPOSA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

TO: STEVE ENGFER/Planning Director
FROM: DANIELLE BONDSHU/Clerk of the Board
SUBJECT: **Code Compliance Annual Report 2023**
RESOLUTION: N/A

The following action was taken by the Mariposa County Board of Supervisors on **April 18th, 2023:**

I.1. Planning (ID # 14002)

Receive the Code Compliance Advisory Committee (CCAC) 2023 Annual Report and Presentation. Discussion and Feedback to the CCAC Regarding the Work Plan is Requested

Steve Engfer introduced the item and turned the floor to Karen Woblesky/Chair of the Code Compliance Advisory Committee (CCAC) who gave the PowerPoint presentation.

Public comment was received by Mike Bruso who disagreed with compliance. Further comments in favor of what CCAC is trying to achieve were received by Nicholas Weinstein/Resident, Colleen Rhodes/CCAC Member, Natasha Gram/Resident, Brenda Ostrom/Resident, and Beverley Andelor/Resident.

Board discussion ensued.

DIRECTION: CCAC is to focus on Resolution 2019-218 for enforcement and compliance.

RESULT: DIRECTION GIVEN



MARIPOSA COUNTY

Board of Supervisors



MEETING: September 18, 2023
TO: The Board of Supervisors
FROM: Steve Engfer, Planning Director
RE: Receive the Annual Report Highlights

RECOMMENDATION AND JUSTIFICATION

Receive the Annual Report Highlights

BACKGROUND AND HISTORY OF BOARD ACTIONS

The annual report was given at the April 18, 2023 Board meeting.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

None.

FINANCIAL IMPACT

None.

ATTACHMENTS

1. 230418 CCAC Annual Report 2022 23 BOS MEMO

February 15, 2023

TO: Mariposa County Board of Supervisors
FR: Code Compliance Advisory Committee (CCAC)
RE: CCAC Status Update; Review and Comment

BACKGROUND

In 2020, the County of Mariposa attempted to implement County Code Amendment No. 2019-218 as a means to help resolve the County's code violations. At the time, there were over 500 code violations, including code violations that went back to the 1990's.

At the Board of Supervisors' meeting on November 10, 2020 - and due to the significant and ongoing public opposition to the proposed County Code Amendment No. 2019-218 - a discussion was held to pursue optional procedural actions for Code Compliance Procedures. Sarah Williams, the Planning Director at the time, gave a presentation that included four recommendations, and noted that the County was successful about 45% of the time when it came to code compliance. In a Staff Report to the Board of Supervisors, Sarah Williams stated the following¹:

"There has been significant and continued public opposition to the Board's preliminary action. There has been misinformation circulating regarding the project. There are threats of referendum action and recall actions. There are threats of legal action. There are defamatory attacks on staff. None of this is healthy for the community and the county. Trying to start a new county program with this level of community angst would not be positive."

The Board of Supervisors ultimately voted for two of the four presented options²:

Option 2: "Hit Pause" and pursue a facilitated process for increasing communications and public interaction regarding issue (citizens' committee), and

Option 4: Review Chapter 8.56 and potentially pursue amendments to address commercial marijuana grows.

¹ Memorandum dated February 23, 2022 to the CCAC from Sarah Williams, Director. Topic: Review Background and Purpose of CCAC; Possible Direction to Staff Regarding Options for Moving Forward (Next Steps) Quote from Staff Report Regarding November 10, 2020

² Memorandum dated February 23, 2022 to the CCAC from Sarah Williams, Director. Topic: Review Background and Purpose of CCAC; Possible Direction to Staff Regarding Options for Moving Forward (Next Steps)

The following are Staff's conclusions taken from the Board of Supervisors' Meeting on November 10, 2023³:

- *The Board wasn't interested in amending compliance procedures with the significant amount of public outcry (including threats) being expressed.*
- *The Board was still interested in increasing the effectiveness of code compliance efforts, but only if committee process was pursued to increase public communications, public interactions and (hopefully) public support.*
- *The Board was interested in aggressively pursuing illegal marijuana operations using current resources.*

On November 3, 2021, the Code Compliance Advisory Committee (CCAC) met for the first time. At our third meeting, held on January 5, 2022, the CCAC was provided with the current Code Compliance Violation List (effective December 23, 2021) with 509 open cases and 679 total violations. The Assessor-Recorder would later inform the CCAC that there are approximately 13,700 parcels within Mariposa County. The violations of the Code Compliance Violation List went back to 1990 and Code Compliance staff was in the process of reviewing this Code Compliance Violation List for current violation status, updates, and verification of recorded notices.

The CCAC is a layperson and volunteer citizen committee charged with identifying and developing recommendations to the Board of Supervisors that will help facilitate an effective Mariposa County code compliance process and program, including developing recommendations for innovative public policy and programs that address residents' needs while also mitigating alleged violations.⁴

Over the past year, the CCAC has sought to understand the historical, complex, and overlapping factors that surround the bigger issue of why code compliance elicits such negative public reactions from property owners and residents within the County.

³ Memorandum dated February 23, 2022 to the CCAC from Sarah Williams, Director. Topic: Review Background and Purpose of CCAC; Possible Direction to Staff Regarding Options for Moving Forward (Next Steps)

⁴ Approved CCAC By-Laws, Article II, Section 1, Purposes and Tasks of the CCAC

The CCAC has solicited input from the public, as well as from those County departments that are responsible for - and impacted by - the County's code compliance program; its failures, its successes, and its consequences. These County departments include: Planning, Administration, Building, Environmental Health, County Counsel, Assessor-Recorder, District Attorney, Public Works, and the Sheriff.⁵ Additionally, the CCAC has reviewed Mariposa County Codes, Ordinances, and researched other jurisdictions' approaches to code compliance.

It is part of that education, exploration, and gaining a greater understanding of the past (and often nuanced) issues related to how the County arrived at the place we are at today that the CCAC has sought to understand.

The CCAC has discussed and debated various code compliance and enforcement issues and topics, and has come to a consensus regarding our focus and priorities related to developing code compliance recommendations for the Board of Supervisors. The CCAC has consistently welcomed public feedback throughout this process.

PURPOSE

The purpose of this memorandum is to provide the Board of Supervisors with the following:

- A status update of the CCAC's activities since November 2021,
- To share the CCAC's key initial findings,
- To share the CCAC's specific initial priorities,
- To share the CCAC's current and future work plan, and
- To solicit any input the Board may have that may assist the CCAC in further developing and finalizing our recommendations.

KEY INITIAL FINDINGS BY THE CCAC

The following represent the key initial findings by the CCAC regarding the issues discovered with the current County of Mariposa's code compliance efforts, and what the CCAC has identified as being a priority to address.

⁵ CCAC Compilation of Take Aways - 02/22/2022 - 05/18/2022. CCAC committee members submitted key take away thoughts, observations and concerns related to code compliance based upon the presentations made by County of Mariposa Department Heads.

Key Initial Finding No. 1: Inadequate education of and communication with the public.

- It is apparent that effective communication and availability of information are generally lacking in the relationship between Mariposa County and property owners and residents as it relates to code compliance. This includes not just what is acceptable, but also includes providing and communicating options of how to mitigate potential - and actual - violations at the lowest possible level. The County lacks a clear roadmap to resolve code compliance issues.

Key Initial Finding No. 2: The County's official website is not well-utilized for code compliance.

- There is a lack of written information regarding code compliance on the County of Mariposa's website where County residents can easily locate answers online to basic and common questions related to code compliance.
- There is a lack of curated written information regarding programs, grants, and activities on the County of Mariposa's website where County residents can easily and proactively identify options for resolving issues that may become code compliance violations.

Key Initial Finding No. 3: Internal code compliance processes and procedures are imprecise and inconsistent.

- There is a lack of written internal code compliance procedures and processes that clearly describe how code violations are identified in terms of health and safety, prioritized, and tracked in terms of next steps and resolution. There is a siloed departmental focus with the handling of code violations. The use of a multi-departmental team approach, with different departments taking the lead as appropriate, and the use of various subject matter experts (SME's) for code compliance cases are only occasionally utilized. Internal structural processes and procedures should be fully documented, consistently applied, and easily available for both internal and public reference.
- There is a lack of written standards of how the County communicates with the public, including what notices and forms are sent to property owners, as well as the language, order, style, tone, and purpose of the written communication.

Key Initial Finding No. 4: No public information source is readily available to keep the alleged violators, complainants, and the public updated as to the violation status.

- There is no online portal as a means of access where the public can easily view the status of code violations and complaints, determine which County department is responsible for the alleged code violation and/or complaint, and learn the expected timeframe for resolution. The code compliance information provided online to the public would be only that information that is considered to be in the public interest and legally appropriate.

The CCAC recently learned that the Planning Department has purchased a software program that has the potential to provide this information. The CCAC will work with Code Compliance staff and the Planning Department to provide feedback as the Planning Department rolls out this new program.

Key Initial Finding No. 5: The Board of Supervisors and County Staff have identified their highest priority is to work cooperatively with property owners and residents to achieve remediation, whereas existing codes and some procedures place an emphasis on punitive penalties and fines to force compliance.

- There is a conflict of tone between what the County publicly states is their priority, namely that the County simply wants to gain compliance and will work with residents and property owners as long as progress is being made to help them become code compliant. However, the language of the County's written Codes, Ordinances, and Departmental procedures emphasizes a focus on significant punitive fines and penalties that are written in either ambiguous language or not applied at all. There is a contradiction in messaging as a result.

DISCUSSION OF INITIAL FINDINGS BY THE CCAC

The major themes that dominate the CCAC's key initial findings of why code compliance has such a negative public reaction within the County of Mariposa relate to a lack of transparency, poor communication with inadequate helpful education of the public, and not having clearly established, consistent, and effective internal code compliance procedures and processes.

It is an unavoidable conclusion that a code compliance program with a history of poor outreach/education/communication and an absence of clear, consistent, and easily understandable documented processes will leave a community confused, anxious, and suspicious about inconsistent code compliance/enforcement approaches with their particular circumstances.

The CCAC's approach over the past year has been that while enforcement is a key component of code compliance, identifying positive actions that will eliminate existing violations - and the potential for future violations - is equally a key component of developing an effective code compliance program. The ultimate goal of the County's code compliance program should be to gain compliance at the lowest level possible. This balanced approach supports the unique character of Mariposa County.

SPECIFIC INITIAL PRIORITIES OF THE CCAC

The CCAC has identified the review of the following code compliance/enforcement Mariposa Codes/Ordinances as specific initial priorities of the CCAC:

- Develop recommendations to update proposed County Code Amendment No. 2019-218.

- Develop recommendations to update Mariposa County Codes/Ordinances, including: Marijuana, Administrative Fines or Civil Penalties, Abatement Actions, including Nuisance, Junk, Abandoned Vehicles, Due Process and Appeals, Building/Permit Fees, Internal/Structural Code Compliance Processes/Procedures, and, Enforcement.

The CCAC has identified the development of the following code compliance programs and activities as specific initial priorities of the CCAC:

- Develop an amnesty program - aka getting “County Verified” for code compliance.

The tone and focus is on developing positive and creative solutions and options to solve and resolve current code compliance issues at the lowest level possible. Strong emphasis will be on effective communication from the County to residents; development of multiple pathways for public compliance that include features from LIAP (Santa Cruz County which identifies and prioritizes code violations by health and safety) and the City of Rialto; review and prioritization of the current code compliance active violation log - including, for example, how the County can facilitate final sign-off instead of properties languishing on the code compliance log; identification of those existing code violations that may not be health and safety violations; development of community events and programs that support code compliance, such as remediation, free dump/landfill days, transfer stations for outlying areas, etc.; and, possible use of a portion of ARPA funds designated to the CCAC for code compliance activities. These may be limited time programs open to all County residents.

- Develop an abatement program.

The abatement program would include nuisance, vehicle abatement, and junk. Possible use of ARPA funds designated to the CCAC for code compliance activities to help initially fund these programs. Explore designation of any assessed fines to establish a fund to be used for an abatement program.

- Develop a County-specific program for tiny homes and an alternative/diverse/wider spectrum of housing options.

As CCAC’s recent recommendation to the Board of Supervisors (which was unanimously approved) to update MCC 18.05, Post-Disaster Recovery, showed us, the limited housing stock within Mariposa County has significant impacts for all of us.

One of the first code violation logs that the CCAC reviewed (effective 12/23/2021) had 254 BWOP (Building Without a Permit) violations and 99 RV, Illegal Camping, and Substandard Housing violations - a total of 353 violations related to housing stock within the County of Mariposa. The CCAC is working on recommendations for various housing alternatives that are legal, safe, healthy, affordable, and will provide a wider spectrum of housing options within Mariposa County.

The CCAC will work with other County departments who are also responsible for developing and/or managing alternative housing options.

- Develop ongoing Mariposa County code compliance programs that focus on community activities/events/programs.

This may include providing additional dumpsters designated to outlying transfer stations; low-interest loans; vouchers; rebates; free landfill days; and, remediation activities/events that support code compliance. Possible use of ARPA funds designated to the CCAC for code compliance activities to help initially fund these programs.

The focus of these programs will be - Enjoying life in a safe, healthy, and beautiful Mariposa County.

THE CCAC'S CURRENT - AND FUTURE - WORK PLAN

The CCAC has already begun working on addressing the initial key findings and specific initial priorities of the CCAC.

The CCAC intends to review and recommend changes for improvement to the existing code compliance procedures through an incremental and thoughtful process. This means that related topics will be reviewed together to ensure that recommendations made are congruent, clear and supportive of the specific objective, as well as supportive of meeting the ultimate goal of reducing code violations.

In November of 2022, the Board of Supervisors' adopted the new Mariposa County Committee Policy language, which corrected conflicting language with advisory committee by-law language, including the CCAC's, and subsequently allowed the CCAC to have ad hoc committees.

In December of 2022, the CCAC voted to establish two ad hoc committees. Both of these ad hoc committees are focused on the largest current code compliance violation: Building Without a Permit (BWOP).

The first ad hoc committee is charged with case review. This committee will review actual current code violation files related to BWOP and identify points of failure on individual cases, with recommendations for functional changes. The second ad hoc committee is charged with related code review. This committee will review Mariposa County Codes/Ordinances that relate to BWOP, with recommendations for code rewrites.

For example, the building-related BWOP codes/ordinances that will be reviewed by the code review ad hoc committee include: 15.20.240 - Notice of Non-Compliance, 15.10.260 -

Penalties, and 15.10.210 - Building Permit Exemptions. As the initial code review continues, there may be additional codes/ordinances that are added to this list.

The ad hoc committees will report monthly to the CCAC. Based on the ad hoc committee findings and recommendations, the CCAC will further review, discuss, and develop recommendations for the Board of Supervisors. The goal and intent is to present the Board of Supervisors with related topical recommendations that address both the systemic issue (key initial findings) and the code revisions being recommended.

Once the case and code reviews related to BWOP are complete, the two ad hoc committees will begin to review the next largest current code compliance violation and the associated Mariposa County Codes/Ordinances.

The review criteria for these two ad hoc committees will remain the same as they continue to work their way through the Code Compliance Violation Log. The case review ad hoc committee will identify points of failure on individual case files, with recommendations for functional changes. The associated code review ad hoc committee will focus on tone, congruency, and purpose for the proposed updates of relevant codes/ordinances.

In January of 2023, the CCAC began an initial review of the 2020 County Code Amendment No. 2019-218. Over the next several months, the CCAC will review the proposed language, intent, and consider the concerns noted by the public.

Additional CCAC work has also begun to develop recommendations on education and awareness communication plans, an amnesty program, junk, free landfill days/additional dumpsters in outlying transfer stations, tiny homes, and abandoned vehicles.

It is the CCAC's intention to develop and present our recommendations to the Board of Supervisors as the CCAC finalizes each recommendation. To date, the CCAC has made two recommendations to the Board of Supervisors, and it is expected that number of recommendations will increase this year.

CLARIFICATION QUESTION RE: MARIJUANA INCLUSION IN THE CCAC REVIEW

The CCAC requests that non-criminal marijuana code/enforcement be included in its purview. Marijuana codes were included at the inception of the CCAC and several members of the CCAC attended the recent Marijuana Roundtable held on October 5, 2022. As a general principle, the CCAC has observed that changes to enforcement/compliance policies/procedures without the CCAC's review and input has the potential to undermine the credibility of both the Board of Supervisors and the CCAC. The CCAC requests that it be involved in any efforts made to refine, clarify, or alter non-criminal marijuana policies, codes, ordinances.

ACTION REQUESTED

The CCAC believes it is important to communicate our progress and our direction to the Board of Supervisors as the CCAC begins to develop and finalize its recommendations that will provide more effective tools to aid in code compliance efforts, and that will also positively impact our community. The CCAC welcomes the Board of Supervisors' input, ideas, observations, and feedback.

Earlier last year, the Board authorized up to \$300,000 in ARPA funds to be used in activities that support code compliance efforts.

With regards to upcoming code compliance programs that will be developed using ARPA funds, the CCAC will work with the appropriate County departments to develop further guidelines and cost estimates. Included in the discussions will be the expected length of any program, the purpose and goal of such programs, how a particular program will be implemented and monitored, and how the CCAC proposes to engage and communicate these opportunities within our community.

Once the details of the program(s) have been developed, the CCAC will then return to the Board of Supervisors to make a specific request regarding the CCAC's recommendations for the code compliance programs and the amount of ARPA discretionary grant funds needed for each.

The CCAC understands that there are time constraints associated with when the ARPA funds must be allocated. The CCAC will work with the appropriate County department(s) to ensure the CCAC's recommendations are timely.

It is the CCAC's intent to bring back recommendations to the Board that are helpful in creating a transparent, effective, and consistent code compliance program that is beneficial to both the County of Mariposa and its residents.

The CCAC invites your feedback.

Thank you.



MARIPOSA COUNTY

Board of Supervisors



Agenda Item – No Resolution Requested

MEETING: September 18, 2023
TO: The Board of Supervisors
FROM: Steve Engfer, Planning Director
RE: Receive an Informational Presentation of the CCAC Review and Summary of Code Enforcement options and 2019-218 Code Amendments from CCAC members

RECOMMENDATION AND JUSTIFICATION

Receive an Informational Presentation of the CCAC Review and Summary of Code Enforcement options and 2019-218 Code Amendments from CCAC members.

BACKGROUND AND HISTORY OF BOARD ACTIONS

The Board considered code amendments commonly referred to as "2019-218" on May 19, 2020, October 20, 2020 and November 10, 2020. On March 16, 2021 Board directed staff to prepare a proposal to form the CCAC. June 8, 2021 Board adopted Resolution No. 2021-331 establishing the CCAC. August 17, 2021 Board approved nine members for the CCAC.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

None.

FINANCIAL IMPACT

None.

ATTACHMENTS

1. California Code Enforcement Options & Code Amendment 2019-218
2. Excerpt Pages from RES 2019-218

Date: September 18, 2023

To: Board of Supervisors and Code Compliance Advisory Committee

From: Colleen Rhodes, CCAC member

Re: **California Code Enforcement Options & Code Amendment 2019-218**

California law provides a wide range of options for enforcement against nuisances, substandard buildings, and other violations of state statutes and county codes. These include:

- Criminal prosecutions
- State Housing Law processes
- Judicial abatement
- Administrative abatement
- Summary abatement, and
- Administrative fines

In addition to these state-law based enforcement options, local legislative bodies have many alternatives available for enhancing code compliance that are not limited by state statutory constraints. The CCAC's research has found that many counties and cities use such approaches in inventive and effective ways. Certainly, the most popular remedies for Mariposa County's code compliance challenges are likely to be those that are designed outside the state law enforcement framework, areas more focused on compliance, which the state has left to each county's discretion. These approaches include amnesty programs, voluntary and cooperative abatement, improved communication, assistance with access to grant funding and low interest loans, collaborative relationships between staff and residents, improved priority-setting and business processes, community education, and improved accountability for code enforcement staff. The CCAC has studied these eight community-building approaches and proposes to give more attention to them in the months to come.

Although this "California Code Enforcement Options & Code Amendment 2019-218" memorandum does not address these innovative, cooperative approaches, their exclusion is not intended to minimize the fact that they are likely to be more effective than more punitive and adversarial measures. This memorandum by necessity focuses on the state statutory framework so that we all are aware of the many enforcement options available in our state, but creative alternatives should be kept in mind even in this context.

As essential to the process of moving forward as understanding the six state-law based options is, achieving a clear-eyed assessment of County Code Amendment 2019-218 is also important. The two subject areas benefit from being considered together because both rely upon an accurate and informed reading of state statutes. As will become apparent during the analysis of Code Amendment 2019-218, that legislation repeatedly ignores state statutory requirements and guidelines. In one major instance, it misrepresents and essentially misquotes a state statute. Clearly, an understanding of the six options available as well as an honest evaluation of Code Amendment 2019-218 can only be achieved alongside a basic understanding of the state statutory environment.

The often-asserted claim that code enforcement currently has no tools available must also be addressed forthrightly. Mariposa County is already empowered to bring criminal prosecutions, civil abatement actions, State Housing Law enforcement actions including abatement and receivership, and more. Mariposa County Code Titles 1, 3, 8, 15, and 17 all contain enabling language that is useful to public nuisance and substandard building enforcement efforts. Nevertheless, the CCAC has found that these tools are rarely used. The factual foundation that CCAC members and Supervisors will possess after studying these state law options will advance the understanding not only of available tools but also of the implications of each to relevant public policy.

The authority of the Mariposa County Board of Supervisors is vast, but not unlimited. The California Constitution provides that a county may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Const., art. XI, section 7). It is well settled that no county, whether general law or charter, may exceed the authority granted to it by the state. As appellate courts have repeatedly proclaimed, “Local legislation in conflict with general law is void.” With these realities in mind, Code Amendment 2019-218 must be analyzed and fully understood. Moving forward, if the CCAC is to propose and the Board is to adopt improvements to codes that will survive the intense scrutiny they will be given, we need an understanding of the areas in which the state has fully occupied the field as well as other areas in which there is still room for local variation and innovation.

Essential Terms: Fines, Fees, and Costs

Misunderstanding of essential terms greatly impedes accurate reading of state statutes, therefore, at the outset, we need clear understandings of the following three words: fines, fees, and costs. The failure to distinguish among them can lead to major errors.

Fines	Monetary penalties. Punishment. Fines do not provide for or lead to abatement. Alternatively referred to as penalties, although penalties may include non-monetary punishments. Fines are included in many titles of the current Mariposa County Code. Fines are not recoverable through administratively imposed special assessments and liens.
Fees	The cost of providing services; must be fully documented and justified. Revenues from fees collected must not exceed the funds needed to provide the service. May be challenged by the people. See California Constitution, Government Code, etc. Recoverable in many cases through special assessments and liens.
Costs	Actual costs paid or to be paid for abating a nuisance. Administrative costs, including staff time and expenses involved in investigating and abating or preparing to abate a nuisance. Under certain circumstances, may include attorneys’ fees. Recoverable in many cases through special assessments and liens.

To further distinguish fines from other approaches, it is important to remember that correction, eradication, and elimination of violations are accomplished through abatement, not through fines. As already mentioned, abatement procedures may be handled administratively or may be ordered by the

court after a civil action has been filed and heard. Abatement has been ordered in criminal cases as a condition of probation. The State Housing Law includes sections that provide for abatement. In emergency situations, abatement may sometimes be accomplished summarily.

Navigating this Memorandum

On pages 3 through 8, this memorandum sets forth the basics of the legal framework provided by state statutes for the six code enforcement approaches: criminal prosecutions (p. 3), State Housing Law processes (pp. 3-4), judicial abatement (p. 4), administrative abatement (pp. 4-6), summary abatement (p. 5), and administrative fines (pp. 6-7). Analysis of Code Amendment 2019-218 is on pages 8 through 16. The full text of the state statutes themselves is appended for your convenient access at pages 17 through 28.

Criminal Provisions – Penal Code Sections 372 and 373a

Penal Code sections 372 and 373a are state statutes that make public nuisances misdemeanors. Not only is the creation or maintenance of a public nuisance criminalized, but the person held responsible for it may be punished for an ongoing violation as a separate and distinct offense for each and every day (“after service of notice” by a health officer or district attorney).

Existing Mariposa County Code section 1.20.010 states, “Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the county shall be guilty of a misdemeanor unless the violation (or failure) is made an infraction by ordinance.” Existing Mariposa County Code section 1.20.040 is consistent with PC 373a and states, “Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the county is committed, continued, or permitted by such person, and he shall be punishable accordingly.”

Although these criminal provisions were adopted in 1977 and amended in 1985, they have rarely been used regarding code enforcement cases within the CCAC’s purview. Code enforcement staff have indicated that three marijuana-related building or zoning violations were sent to the District Attorney for prosecution in 2021. Whether criminal consequences are appropriate and effective in the context of even the most egregious building, zoning, and environmental health violations still requires public discussion and additional consideration by both the CCAC and the Board. These are public policy issues that go far beyond the mere text of the statutes.

The State Housing Law, Health & Safety Code Sections 17910 et seq.

The State Housing Law and the related Building Codes are a fully developed, comprehensive set of building standards and enforcement mechanisms already available to Mariposa County. The following sections and subsections are included because they are some of the most important to understand, but there are many more not included here.

Health & Safety Code section 17920.3 lists and describes the conditions that cause a building to be characterized as substandard. Note that the substandard condition need only apply to “any building or portion thereof” or even to “the premises on which” the building is located. The condition must endanger “life, limb, health, property, safety, or welfare” of the public or occupants. Health & Safety

Code section 17920.3 is referenced many times throughout the State Housing Law because the definition of substandard is so central to the State Housing Law's enforcement alternatives.

The priorities regarding health and safety articulated in Health & Safety Code section 17920.3 have been discussed by the CCAC. Members have consistently agreed that endangerment to health and safety of the public or occupants is the CCAC's highest priority for enforcement.

Health & Safety Code sections 17920.5 and 17920.6 define the appeals boards required by the State Housing Law. These boards assist in the protection of due process rights. A mere "hearing officer" does not meet the requirements of the State Housing Law.

Health & Safety Code section 17980 provides authority to abate violations under the State Housing Law, including a building's construction, alteration, conversion, or maintenance. A "reasonable time to correct" and 30 days' notice to abate are required. Nuisances upon the "lot on which it is situated" are also subject to enforcement under this statute. Immediate threats to the health and safety of the public or occupants are also covered, permitting a level of summary abatement. A preference for repair over demolition is strongly expressed. Property owners must not be deprived of their rights.

Health & Safety Code section 17980.10 provides additional procedures and processes, makes clear the jurisdictional authority conferred to the enforcing agency, requires careful recordkeeping of expenses and posting of an expense statement, and mandates hearings, meetings, and due process protections.

Health & Safety Code section 17995 declares any violation of this part to be a misdemeanor subject to a \$1,000 fine.

Judicial Abatement, Code of Civil Procedure Section 731

Code of Civil Procedure section 731 is currently available to Mariposa County and requires no additional adoption or action by the Board of Supervisors. It provides for judicial abatement under two different theories – in the first case, when the county itself is "injuriously affected" and in the second case, in its representative capacity.

Under the first meaning, the county may bring a civil action when its own "property is injuriously affected." Such facts allow the county not only to obtain an injunction, but also to be awarded damages: "the nuisance may be enjoined or abated as well as damages recovered."

Alternatively, the county may sue in its representative capacity, in which case, the nuisance may be enjoined or abated, but damages may not be recovered.

Administrative Abatement, Government Code Section 25845

Neither administrative abatement nor summary abatement under Government Code section 25845 is currently available to Mariposa County because the required language has not been incorporated into local codes.

In this statute's text, the requirements of notice and an opportunity to be heard are articulated in the initial sentences: "The ordinance shall, at a minimum, provide that the owner of the parcel, and anyone known to the board of supervisors to be in possession of the parcel, be given notice of the abatement

proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county.” The requirements concerning the hearing itself emphasize the due process protections included in the hearings and appeals processes. GC section 25845 contemplates and provides for several possible hearing arrangements, none of which were included in Code Amendment 2019-218, even though it purported to adopt an administrative abatement program. Due process protections are essential not only to ensure the constitutionality of our local codes and to minimize the potential for costly litigation, but also to reassure residents that rights are taken seriously and protected by the county.

As mentioned above, summary abatement under this statute is unavailable to the county as the Mariposa County Codes are now written. In the statute’s text, the requirements for summary abatement are clear. Note the requirement that summary abatement be utilized only if “the nuisance constitutes an immediate threat to public health or safety.”

From a purely financial perspective, abatement under GC section 25845 is likely to be much more attractive to the county than under CCP section 731 because section 25845 provides that the property owner may be liable for all costs incurred by the county. These costs may include not only the expenses of physical abatement, but also all administrative costs. These costs can be enormous. Code Amendment 2019-218 chapter 1.40.040 defines them as follows:

““Costs of abatement” means the actual costs paid or incurred by the county in connection with fully abating the code violation or nuisance matter, including but not limited to the following: costs of investigation, costs incurred for all inspections and re-inspections, costs of preparation of notices, specifications, and contracts, and inspecting the work performed under contract, costs of mailing and printing notices and documents, personnel costs charged at the fully burdened hourly rate (includes overhead) incurred in preparation for any hearing and appearing at the hearing itself, recording fees, and the cost, including staff costs, expended or incurred by the county in abating the conditions or violations in compliance with any order under this chapter (including on-site and off-site abatement activities, as applicable), including but not limited to any penalties and interest, permitting costs, landfill costs, and costs for the involvement of required licensed professionals.”

Even though the financial benefits are appealing, an administrative abatement program may ultimately be less attractive to the Supervisors due to public policy concerns because it would potentially transfer a huge financial burden to property owners over which they have no control. In addition to reimbursing the county for the costs of the abatement itself, under section 25845 the property owner becomes liable for the costs of the administrative investigation and enforcement efforts that precede and accompany the administrative abatement action, and potentially for any attorneys’ fees incurred. Transferring the costs of an ineffective and inefficient code enforcement function to residents who have no responsibility for and no control over that function is indefensible.

If Mariposa County’s code enforcement processes can be improved substantially, the possibility of adopting some form of administrative abatement under GC section 25845 may be worthwhile to consider. But until major improvements are made, any such change is sure to be controversial and to encounter fierce public opposition.

Also attractive to the county and also extremely controversial are GC section 25845’s provisions for collection of costs and fees if the property owner fails to pay timely. Special assessments and liens are

specifically allowed. Note well, however, that fines are not authorized to be collected through these special assessments and liens.

Government Code Sections 27720 et seq.

Government Code sections 27720 et seq are mentioned in Government Code section 25845(i), which states, “(i) The board of supervisors may, by ordinance, delegate to a hearing officer appointed pursuant to section 27720 the powers and duties specified by this section.” GC section 27720 allows establishment of an office of county hearing officer. GC section 27721 further defines the county hearing officer’s authorized duties.

GC section 27722 requires, in those cases in which the hearing officer is authorized to make the decision, that the decision be written and include findings or conclusions. In those cases in which the hearing officer is not authorized to make the decision, the officer must prepare a recommended decision, including findings or conclusions. The local body may then adopt the recommended findings, conclusions, and decision, or may reject the recommendation and enter its own findings, conclusions, and decision after a review of the record. GC section 27723 allows but does not require the local body to be present during the proceeding.

GC section 27724 requires that any county hearing officer, or any deputy or assistant hearing officer, appointed pursuant to this chapter, must be an attorney at law with at least five years’ experience. GC section 27727 allows the county to contract with the Office of Administrative Hearings of the State of California for the services of an administrative law judge or a hearing officer. Finally, GC section 27728 provides that these provisions constitute an alternative to, and do not supersede, any other provision of law providing for any matter to be heard or determined by a hearing officer.

Administrative Fines, Government Code Section 53069.4

Government Code section 53069.4 is the administrative fines statute that concerns code and ordinance violations. It specifically requires that the local agency “shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review ... of those administrative fines or penalties.” The amount of the fines is set forth in Government Code section 25132. Due process rights apply.

The most impactful language in GC section 53069.4 is included in subparagraph (a)(2)(A). It is the requirement that any ordinance adopted by the Board of Supervisors “provide for a reasonable period of time ... to correct or otherwise remedy the violation prior to the imposition of administrative fines” and that this provision “pertains to building, plumbing, electrical, or other similar structural or zoning issues.” These are the issues dealt with most by the code enforcement programs within the CCAC’s purview.

The “reasonable period of time” required by the statute is central to the success or failure of any local program designed under the auspices of GC 53069.4. Code Amendment 2019-218 handles the issue with stunning ineptitude (see page 12). If the Supervisors decide that they are interested in considering an administrative fines program, significant fact-finding must be done to determine what “a reasonable period of time” is in the specific conditions of Mariposa County. The experiences of locals will need to be respectfully listened to if the “reasonable period” is to be defensible. Hopefully none of us needs a reminder that the function of local government is not merely to enforce rules and collect fines, fees, and

taxes. Its actual justifications and reason for being are in its ability to help residents and property owners solve problems, overcome disasters, and handle challenges of daily living.

The credibility hurdle is a high one. An administrative fines program is questionable from the very beginning. Since it doesn't correct, remedy, or abate the violation, it doesn't improve health or safety. It won't quiet any complaining parties or make the neighbors happy. What it does is bring in penalty revenues, although it may not do this as well as Code Amendment 2019-218's scheme promised, since fines cannot be included in special assessments and liens.

GC section 53069.4(a)(2)(A) adds that when the violation creates "an immediate danger to health or safety" the provision allowing "a reasonable period of time ... to correct the violation" does not apply. The provisions in GC 53069.4(a)(2)(B) involve illegal cultivation of cannabis, and need not be considered today. The provisions in GC 53069.4 subdivisions (b), (c), and (d) give guidance as to how an appeal to the superior court is to be handled. The courts at both trial and appellate levels have gone well beyond the limitations specified in these subdivisions in an effort to consider all aspects of code enforcement cases involving fines programs. Poorly written administrative fines programs, purportedly designed as GC 53069.4 requires, have resulted in some counties refunding millions of dollars in fines to residents and property owners.

Fine Amounts, Government Code Section 25132

Government Code section 25132 is relevant to criminal prosecutions (misdemeanors and infractions) and administrative fines programs defined by Government Code section 53069.4(a)(1). Whether criminally prosecuted or administratively fined, property owners can quickly accrue large monetary penalties because the existence of an ongoing violation is characterized as a separate and distinct offense for each and every day it continues to exist after notice is given and a reasonable opportunity to correct is allowed. Government Code section 25132(a), provides that "Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction."

Subdivision (b) Violation that is an infraction is punishable by:

1 st violation	\$100
2 nd violation of same ordinance within one year	\$200
Each additional violation of same ordinance within one year	\$500

Subdivision (c) Violation of building/safety code that is an infraction is punishable by:

1 st violation	\$130
2 nd violation of same ordinance within one year	\$700
Each additional violation of same ordinance within one year	\$1,300

Such fines and penalties are significant. But as high as they are, they do not rise to the level that is proposed in Code Amendment 2019-218, which doubles fines on the 31st day and adds an unexplained 10% fee as a surcharge to the total. By contrast to the unlimited fines set up in Code Amendment 2019-218, many counties enact much lower fines, some starting as low as \$5 for the first violation and others capping the total. The decision to write Code Amendment 2019-218 in such a way that it allows fines to rise quickly and without limit evidences strongly punitive, even predatory, motivations that ignore good public policy. Such a negative approach is not required by the statute. Government Code section 25132(e)(4) invites lower fines, stating, "Nothing in this subdivision limits the authority of a county, or

city and county, to establish lower fines for specific violations by ordinance.” Thoughtful consideration needs to be given to the benefits of establishing (e)(4)’s lower fines, and that discussion must involve the public.

Government Code Section 54988

Government Code section 54988 provides additional statutory authority allowing for collection of fees, costs, or charges incurred in the abatement of public nuisances, correction of violations related to untenable dwellings, zoning enforcement, State Fire Marshal codes, inspections and abatements under the State Housing Law, Building Standards Code, and related local ordinances.

The text of GC section 54988(a)(1), modified here only to enhance comprehension, but not to mislead, is as follows:

“Government Code 54988

(a) (1) In addition to any other remedy provided by law, ... the legislative body of a ... county ... may collect any fee, cost, or charge incurred in any of the following:

(A) The abatement of public nuisances.

(B) ... [untenable dwelling violation]

(C) The enforcement of zoning ordinances ...

(D) Inspections and abatement of violations of ... [State Fire Marshal codes]

(E) Inspections and abatement of violations of the State Housing Law ...

(F) Inspections and abatement of violations of the California Building Standards Code (Title 24 of the California Code of Regulations).

(G) Inspections and abatement related to local ordinances and regulations that implement any of the foregoing.

If the fee, cost, or charge has not been paid within 45 days of notice thereof, the ... county ... may collect the fee, cost, or charge by making the amount of the unpaid fee, cost, or charge a proposed lien against the property that is the subject of the enforcement activity.”

[Underlining added]

As the text shows, the series of words “fee, cost, or charge” occurs four times in GC section 54988(a)(1). Never does the word “fines” appear in the series. Nevertheless, this statute was misrepresented in Code Amendment 2019-218 as also including fines. It does not. The impact of this misdirection cannot be overstated.

It is also extremely important to note that section 54988 does not apply to owner-occupied residential dwelling units. See paragraph (a)(3) which states, “This section shall not apply to owner-occupied residential dwelling units.” Because many, perhaps even most, Mariposa County code enforcement cases involve owner-occupied residential dwelling units, it is shocking that this exclusion was not specifically pointed out in Code Amendment 2019-218. An over-trusting reader could have been led to believe that GC section 54988 allows collection of fines in special assessments and liens filed against owner-occupied residential dwellings, whereas it allows neither.

County Code Amendment 2019-218

County Code Amendment 2019-218, proposed in 2020 and rejected by the Board of Supervisors on November 10, 2020, has been determined by the CCAC to be not only bad public policy, but also contrary to law. Its failings are so pervasive the committee concluded time spent on it would be wasted,

but out of deference to the Board of Supervisors and in consideration of the CCAC's advisory role, many hours have been dedicated to its study and analysis. The consensus of CCAC members is that our efforts are more productively spent researching, fact-finding, data-gathering, and developing recommendations for innovative public policy and programs that address residents' needs while also mitigating alleged violations, as Board Resolution 2021-331 defines our purpose.

Pages 9 through 16 include a portion of our analysis of Code Amendment 2019-218, including some, but not all, of its policy and legal failures. This discussion centers around the two amendments to Mariposa County Code Title 1, the administrative fines program proposed in Chapter 1.40, and the administrative abatement program proposed in Chapter 1.42. The following eleven items are some of the most important areas in which County Code Amendment 2019-218 fails. They include that it –

- (1) Violates due process rights
- (2) Imposes fines that are unlimited and excessive
- (3) Imposes fees that are unjustified and unjustifiable
- (4) Includes fines in special assessments and liens, which is illegal
- (5) Creates timelines and deadlines that are unworkable and illegal
- (6) Defines nuisances arbitrarily and too broadly
- (7) Misstates the law
- (8) Asserts baseless claims as facts
- (9) Defines essential terms in confusing and contradictory language
- (10) Defines certain acts as both discretionary and mandatory
- (11) Delegates unbridled discretion and power to subordinate county employees

1. Violates due process rights

Both the U.S. and California Constitutions protect due process rights, as do state statutes and appellate caselaw. Procedural due process requires notice and an opportunity to be heard. Those protections have not been meaningfully incorporated into the appeals and hearing processes of Chapters 1.40 and 1.42 of Code Amendment 2019-218. Specific statutory requirements regarding hearing officers and appeals boards have also been ignored.

Laws are required to give citizens adequate notice of what is prohibited. There is no way that a reasonably well-informed resident or property owner in Mariposa County can be expected to obtain adequate notice from the "Applicable code(s)" definition of Code Amendment 2019-218, which states: "'Applicable code(s)' means the Mariposa County Code (MCC), applicable state and federal codes and regulations, Mariposa County resolutions, and conditions on entitlements or permits." The notice requirements of procedural due process are not met.

The opportunity to be heard is equally essential. Yet under Code Amendment 2019-218, to secure the right to an appeal hearing, a substantial appeal fee must be prepaid in addition to prepayment of the full amount of the fines and 10% fees. These amounts must be paid within 15 days of issuance of the contested citation. These requirements completely block access to essential due process protections.

The possibility of securing an appeal hearing is further impeded by the provision that requires the completeness and timeliness of the appeal application to be reviewed and approved or denied by county counsel. The person in the position of representing the county and code enforcement staff when a property owner files suit after an unsuccessful hearing is county counsel. Not to impugn county counsel's character as an individual, but it is clear that there is a conflict of interest in having the power

to resolve difficult court cases by preventing them from being filed in the first place, which not only reduces the office's workload, but avoids the potential for costly litigation.

A similar conflict of interest is set up by the provisions that require a department director to review an appellant's private financial information for the purpose of approving or, more likely, disapproving allowance of the "advance deposit hardship waiver" (1.40.130). Although the conflict may not be recognized or acknowledged by the individual director tasked with such an onerous assignment, it is likely to have a strong subconscious impact on the decision rendered and a significant negative effect on the appellant's access to his due process right to an opportunity to be heard.

There are also too few protections put in place to ensure the neutrality of the hearing officer. Selection of that individual is made by the CAO. Code Amendment 2019-218's guidance regarding whether the hearing officer would be a county employee or not is ambiguous. The quality of the evidence that is allowed to be presented and considered is unclear. The depth, detail, and breadth of the required findings is inadequate. As a result, neutrality is not guaranteed. Due process requirements are not met.

If access to the appeals hearing is blocked and the alleged responsible party is determined to have failed to exhaust administrative remedies, further access to the courts will vaporize and no due process at all will have been provided. Although true failure to exhaust administrative remedies will not be tolerated by the courts, loss of such access should never be based on the creation by local government of insurmountable obstacles. The requirement of prepayment of contested fines and unjustified fees along with exorbitant appeals hearing fees as included in Code Amendment 2019-218 creates such an obstacle. Under the Code Amendment, the purported opportunity to be heard is little more than a false promise.

There are still other due process failures in Code Amendment 2019-218. GC section 25845 defines an administrative abatement program, which requires that the Board of Supervisors or another qualified board sit as the appeals board or requires a hearing officer qualified under GC section 27720 and appointed by the Board of Supervisors. By contrast, Chapter 1.42 allows the CAO to appoint the hearing officer. This arrangement is contrary to state law.

Chapter 1.42 also allows appointment of a hearing officer who lacks any of the qualifications required by state law. It is noteworthy that the Planning Commissioners who reviewed Code Amendment 2019-218 on October 9, 2020, questioned the reasonableness of this provision. Then-Planning Director Williams indicated she shared their concern and answered that it would be important for the hearing officer to be qualified, but the necessary amendments to Code Amendment 2019-218's text were never made.

2. Imposes fines that are unlimited and excessive

The fines imposed are virtually unlimited. They may be imposed "each and every day" for an ongoing violation. They may readily accumulate to levels that are impossible for the residents of our county to pay. When county staff presented Code Amendment 2019-218 to the Planning Commission in 2020, they were asked about the "each and every day" provision and made clear that it means exactly what it says. As if to add insult to injury, the fines double on the 31st day. These provisions of Code Amendment 2019-218 are unreasonable.

3. Imposes fees that are unjustified and unjustifiable

State law provides that fees may not exceed the cost of providing the service. Proper procedures must be followed in setting fees charged by governments in California. It is not legal for county government to

arbitrarily proclaim the amount of new fees without proper study and analysis of the costs that underlie them. But Code Amendment 2019-218 does just that. Chapter 1.40 proposes that fees be set without articulating their justification and without following the procedures required. Further, the fees, which were inexplicably set at 10% of the fine amount (see 1.40.050.F(1) and (2)), are unjustifiable as based upon actual costs because they not only were to be imposed “each and every day” but also were set to double on the 31st day (see 1.40.050.J). Even considering the averaging of costs that is allowed by law, in the real world, costs are not 10% of penalty amounts and they surely do not double on the 31st day.

Another confounding aspect of the fees in Code Amendment 2019-218 is that the high hearing fee will not be refunded even in those instances when the appellant prevails at the hearing. This failure to refund is not only unfair, it also creates a profit motive that should never exist. Note that Mariposa County Code 8.56.340, which Code Amendment 2019-218 was intended in part to replace, does refund the hearing fee in such circumstances. It is evident that refunds of hearing fees were contemplated and authorized by prior Boards. They should be now as well.

4. Includes fines in special assessments and liens, which is illegal

Fines cannot be included in special assessments and liens through an administrative program. Chapter 1.40 proposed to administratively charge and collect fines in special assessments and liens, practices which are not authorized by any state statute. Several bills have been written to allow just that, but not one of them has become law. Every such bill has been vetoed by the sitting governor, whether Republican or Democrat. AB 2317 and AB 2613 were vetoed in 2010, AB 129 was vetoed in 2011, AB 683 was vetoed in 2013, and SB 1416 was vetoed in 2018.

The veto language of all five bills is similar and is enlightening. One example of the governor’s veto message: “this bill could hamper efforts on the part of distressed homeowners to refinance or sell their property. While the bill requires additional outreach to a homeowner before a lien is recorded, there is no limit on the accrual of fines until that time. Abating the ordinance violation should be the primary goal and there is already an existing process for locals to recover their costs.”

Sonoma County included fines in a lien against a woman’s property, but removed those penalties from the property owner’s tax bill when she confronted them with the facts of a 2016 federal court decision that laid out the history of California’s prohibition against including fines in liens. (See *Elder-Evins v. Cnty. of Sonoma* (2021)). The federal court decision relied upon by Sonoma County when they corrected their erroneous imposition of fines is *Mechammil v. City of San Jacinto*, which held that “cities in California cannot attach liens or impose special assessments to collect outstanding nuisance fines or penalties,” in contrast to nuisance abatement costs. (*Mechammil v. City of San Jacinto* (9th Cir. 2016)).

The overwhelming impact of Code Amendment 2019-218’s failure to understand that fines cannot be included in special assessments and liens cannot be overstated. Without the authority to collect fines in this way, Code Amendment 2019-218 is not able to readily take residents’ homes as punishment for code violations. Instead of creating a windfall, the fines program creates significant amounts of likely uncollectable property owner debt and sets in motion a series of negative consequences that could have been avoided if the law had been followed. The violations on the subject properties are likely to go uncorrected because administrative fines programs do not include an abatement component. Property owners will become more alienated from county representatives. Complaining neighbors will not see improvement. Negative feelings about predatory and intrusive, but ineffective, government will grow. No one wins.

5. Creates timelines and deadlines that are unworkable and illegal

Government Code section 53069.4(a)(2)(A)'s central requirement of a "reasonable period of time" to correct violations is ignored by Code Amendment 2019-218. In our remote county, the ten days specified as a "Mandatory Grace Period" in Chapter 1.40.080(A) are not sufficient to qualify as "a reasonable period of time." Few if any violations can be corrected in ten days in the best of circumstances.

The language of 1.40.080(B) inadvertently acknowledges that Code Amendment 2019-218 is not in compliance with the statute. It states that "In addition to the mandatory grace period described in subdivision A, the code official shall have the authority to allow for the postponement of the imposition of the fine and fee to allow the responsible party a reasonable amount of time, as determined by the code official, in which to correct the violations(s)." [Underlining added] The "reasonable period of time," which is mandatory according to the state administrative fines statute, is merely discretionary under the language of Code Amendment 2019-218. This violation of GC section 53069.4's requirements is inconsistent with the law and entirely unacceptable.

The distortion of the state statute's fundamental requirements continues in 1.40.080(C), in which the maximum time period allowed to the property owner "shall not exceed thirty (30) days." No consideration is given in Code Amendment 2019-218 for the real probability that securing competent workers and the money to pay them takes substantially more than 30 days throughout Mariposa County and even more time in remoter areas.

Since the actual time required to correct a violation is likely to exceed 30 days, the responsible party is virtually coerced into a "compliance agreement." But even the terms of the Code Amendment's compliance agreement are unfair. It provides that the code official has the authority to discard the compliance agreement and impose fines retroactively to the date of the administrative citation (1.40.080(E)), thus defeating the "mandatory grace period" of ten days and the safeguards of GC section 53069.4(a)(2)(A). Imposing fines retroactively to the date of the administrative citation defeats the state statute's requirement that the "reasonable period of time" precede and be "prior to" any fees being imposed.

But these are not the only violations of the state administrative fines statute that were written into Code Amendment 2019-218. Section 1.40.080(D)(3) states that "Violations which can be corrected immediately at a cost to the responsible party of less than two hundred dollars (\$200.00)" are "not eligible for postponement of imposition of fines and fees," even though no authority exists for such a provision. Not only does this exclusion contravene the law, but also the absurdity of a \$100 initial fine plus 10% fee charged against a less than \$200 violation is mind-blowing.

Instead of being a reasonable and logical way to solve code compliance challenges in our county, Code Amendment 2019-218 shows itself to be a transparent attempt to collect excessive fines and to do so prematurely through a scheme that is not approved by any state statute.

6. Defines nuisances arbitrarily and too broadly

Code Amendment 2019-218 defines nuisances in section 1.42.030. They are lettered from A through Z and AA through DD, for a total of 30 individual definitions. The foundational state statutes that define nuisances can be found in Civil Code sections 3479 - 3481. They are straightforward and have not changed over 150 years.

Civil Code section 3479 defines a nuisance in terms familiar to most of us as “Anything which is injurious to health, including ... the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property...” Civil Code section 3480 adds the characteristics that make a nuisance a public concern: “affects at the same time an entire community or neighborhood, or any considerable number of persons ...” Civil Code section 3481 declares that all other nuisances are classified as private ones.

The full text of the three sections --

Civil Code section 3479. Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Civil Code section 3480. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Civil Code section 3481. Every nuisance not included in the definition of the last section is private.

With these definitions in mind, it is enlightening to review the 30 nuisances defined in 1.42.030. It is immediately apparent that at least ten of the 30 aren’t nuisances at all. Not public nuisances. Not private nuisances. Most do not define conditions that endanger health or safety. Section 1.42.030(DD) is especially remarkable for its failure to identify an issue of public concern with specificity: “Any condition that violates any provision of this code, applicable law, or any county permit or approval.”

The county has previously concerned itself with public nuisances, not with private nuisances, and certainly not with conditions that don’t meet the statutory definition of nuisances at all. The current Mariposa County Code requirement is consistent with Civil Code section 3480, that a nuisance “affects at the same time an entire community or neighborhood, or any considerable number of persons.” Why this Code Amendment proposes to take on so much additional regulatory burden and to interfere so much more deeply into people’s lives has never been explored. A vigorous public policy discussion on these issues is required before such major changes are adopted.

In addition to the above concerns, the conflicts of several of the Code Amendment’s nuisance definitions with the provisions of the State Housing Law need to be examined when time permits, especially Health & Safety Code section 17922 (referred to as the Uniform Housing Code) subdivision (e): “Regulations governing abatement of substandard buildings shall permit those conditions prescribed by Section 17920.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant thereof.”

As the governors’ vetoes discussed in #4, above, indicate, California has a housing crisis. New legislation is regularly analyzed to consider whether changes could exacerbate that crisis. It appears that Code Amendment 2019-218 would make our local housing shortage worse. Before seriously considering its adoption, those potential harms need to be thoroughly analyzed and discussed.

7. Misstates the law

The proposed amendment attempts to harness the power of Government Code section 54988 to accomplish takings which the state legislature never authorized or intended. Proposed 1.40.050(L), which is part of the administrative fines chapter, misquotes GC section 54988 by adding the term “fines”

not once but twice. The state statute refers to “fees, costs, and charges,” but does not include administrative fines. Further, the proposed code is written as if it should apply to the fines program even though the state statute is about abatement. Worse still, the proposed text gives the impression that it can be used against owner-occupied residences. But GC section 54988(a)(3) definitively states, “This section shall not apply to owner-occupied residential dwelling units.” These errors in 1.40.050(L) raise a red flag and lead to a serious loss of confidence in the legal foundation of Code Amendment 2019-218.

8. Asserts baseless claims as facts

Code Amendment 2019-218 was presented to the Board of Supervisors in 2020 as a resolution rather than as an ordinance. Therefore, the following analysis will refer to the “Findings” included in the resolution as well as the text of the proposed legislation. These include many baseless claims, which are not appropriate for inclusion in a document that was intended for adoption by the Board of Supervisors.

Finding 3 states, “That amendment conforms to the requirements of state law and county policy. Evidence: This project has been processed in accordance with State law and county policy. The amendment ensures the County’s codes establishing rules and procedures to obtain compliance are internally consistent and consistent with State law.”

The legislation is not “internally consistent” nor is it “consistent with State law.” The Administrative Citations program defined in Chapter 1.40 conflicts with the very state law that authorizes such fines programs, Government Code section 53069.4. The Administrative Abatement program defined in Chapter 1.42 fails to meet the requirements of the very state law that authorizes such abatement programs, Government Code section 25845. Other state law inconsistencies abound, including the misstatement of the authorities in Government Code section 54988, due process violations which are inconsistent with the California Constitution, and the 10% fees added to the fines described in Chapter 1.40 which are unjustifiable as discussed above.

Section 1.40.010 Purpose, Findings, and Intent contains multiple misstatements including that the “administrative citation program ... will reduce the burden on the judicial system” whereas in truth there has been no “burden on the judicial system” for many years given that only a few code enforcement criminal prosecutions have been pursued and only two civil lawsuits involving receiverships. The claim in this same section that the program in Chapter 1.40 provides due process is also untrue, as has been described above. The same section states that Chapter 1.42 is “consistent with the provisions of Government Code Section 25845” but it is not, as the analysis on pages 4 through 6 demonstrates. Similar misstatements continue throughout Code Amendment 2019-218.

In addition to these specific statements, the factual underpinnings of Code Amendment 2019-218 seem flawed when residents and property owners are characterized as uncooperative although they have not been made aware of complaints against their property, when code enforcement staff complains of existing codes having no “teeth” even though Mariposa County Code authorizes criminal prosecutions, civil lawsuits under Code of Civil Procedure section 731, and a range of options under the State Housing Law, from abatement through receiverships, and when many cases on the Violations Log date from decades ago, with few having been actively pursued over the past years.

9. Defines essential terms in confusing and contradictory language

Code Amendment 2019-218 chapter 1.40.040 Definitions, provides that “‘Notice of violation’ means and includes an administrative citation, and/or a notice and order to abate, and/or a notice of unsafe

condition, and/or a notice of intent to find violation, and/or a notice of violation, and/or a correction notice.”

The entire reason to include the “Definitions” section is to provide increased clarity. This definition does exactly the opposite. It mentions six types of notice, each of which is dramatically different from the others, each of which has different consequences, activates different timelines, and puts the recipient on notice of different rules and potential outcomes. A “notice of intent to find violation” does not even mean that a violation exists, whereas a “notice and order to abate” has already found a violation and orders that it be corrected. An “administrative citation” does not necessarily lead to correction, but does begin the accumulation of fines. All six cannot be lumped under a single term in the Definitions section. The practice is a recipe for disaster.

There is additional confusion on the issue of “notice and order to abate.” In chapter 1.42, a second type of “notice and order to abate” (seventh type of notice overall) is mentioned. It apparently is not included in the 1.40.040 Definitions. It is referred to at 1.42.080(C)(4), which states, “For notices to correct violations of, or to abate nuisances under, the State Housing Law (Health and Safety Code Sections 17910 *et seq.*), including the Uniform Housing Code, a second notice and order to abate shall be served as required under Title 25, Section 60.” The text is so confusing that no further analysis is productive. It is sufficient to note that the definitions of essential terms are confusing and contradictory.

10. Defines certain acts as both permissive and mandatory

1.40.040 Definitions states, ““May” is permissive” and ““Must” and “shall” are each mandatory.” Despite this, the determination of whether the code official “may” or “shall” order a nuisance to be abated is unclear. The problem with the following section from Code Amendment 2019-218 is so obvious from a mere reading that taking the time to dissect it feels like a foolish waste of time. But the potential for arbitrary enforcement that the existence of (A) and (B) would allow is too impactful to ignore.

“1.42.080 Administrative Procedure for Abating Nuisances

A. May Order Abatement of the Nuisance. Whenever the code official determines that a nuisance exists, the code official may order the nuisance to be abated.

B. Issuance of a Notice and Order to Abate. Should the code official determine that a condition has been created or maintained on private or public property which constitutes a nuisance as defined in Section 1.42.030 (Nuisance - Defined), above, the code official shall issue a notice and order to abate.” (Underlining added)

There is likely to be little or no real-world difference between (A) “the code official determines that a nuisance exists” and (B) “determine(s) that a condition has been created or maintained on private or public property which constitutes a nuisance.” The only possible way to parse the sentences to conclude there is a difference between (A) and (B) is to pretend that the list of nuisances “defined in Section 1.42.030” is a smaller subset of the less-well-defined “nuisance” mentioned in (A). But the nuisances “defined in Section 1.42.030” include conditions that do not qualify as public or private nuisances. The universe of nuisances in (A) for which the code official has discretion to order abatement or not is smaller than the universe in (B) for which “the code official shall issue a notice and order to abate.” So, (B) trumps (A). But the inclusion of (A) gives the code official license to exercise discretion when that opportunity should not exist, that leads nicely to the very significant point in #11, which contends that Code Amendment 2019-218 delegates unbridled discretion and power to subordinate county employees.

11. Delegates unbridled discretion and power to subordinate county employees.

The excessive delegation of decision-making authority to the code official permeates the whole of Code Amendment 2019-218. One paragraph that serves to illustrate this excessive delegation is 1.40.050(C), quoted here in its entirety.

1.40.050(C)

"The code official shall have the authority and power necessary to determine whether a violation of any applicable code(s) exists, the person(s) responsible for the violation(s), and the authority to take appropriate action to gain compliance with the provisions of any applicable code(s). These powers shall include, but not be limited to, the power to issue notices of violation, administrative citations, and notices and orders, the power to assess civil fines (hereinafter referred to as "fine" or "fines") and administrative fees (hereinafter referred to as "fee" or "fees"), the power to assess late payment fees, the power to assess collection costs, the power to assess inspection and re-inspection fees, the power to inspect private and public property, the authority to enter into a compliance agreement, the authority to record notices, and the power to use the administrative remedies which are available under this title and the applicable code(s)."

[Underlining added]

The paragraph declares that the code official has complete, unfettered, and unlimited power over code enforcement issues and cases, using the word power nine times in short succession. The code official unilaterally decides all the following:

- "whether a violation of any applicable code(s) exists" (Applicable code(s) includes "the Mariposa County Code (MCC), applicable state and federal codes and regulations, Mariposa County resolutions, and conditions on entitlements or permits"),
- who is responsible for those violations,
- whether to issue a notice of violation (which could be any of the six items described under 1.40.040 Definitions: "'Notice of violation' means and includes an administrative citation, and/or a notice and order to abate, and/or a notice of unsafe condition, and/or a notice of intent to find violation, and/or a notice of violation, and/or a correction notice."),
- whether to assess fines and what their amounts will be,
- as well as fees, late payment fees, collection costs, inspection and re-inspection fees,
- whether to inspect private and public property,
- whether to enter into a compliance agreement,
- what its terms will be,
- whether it will be allowed to continue to completion or be terminated prematurely,
- whether to record notices, and
- whether to use "the administrative remedies which are available under this title and the applicable code(s)," which, to reiterate, means Code Amendment 2019-218 and "the Mariposa County Code (MCC), applicable state and federal codes and regulations, Mariposa County resolutions, and conditions on entitlements or permits."

The problems inherent in the paragraph include drafting, legal, and policy failures. Not a single objective standard or fact-based process is required to be followed by the code official. It seems evident from the terms used and the scope and breadth of authority assigned that the paragraph was written with power in mind instead of duty and responsibility. It delegates unbridled discretion to a subordinate employee in a way that is inconsistent with the law and fails to codify good public policy.

TEXT OF RELEVANT CALIFORNIA STATUTES

PENAL CODE sections 372 and 373a – Criminal

Penal Code section 372.

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

(Enacted 1872.)

Penal Code section 373a.

Each person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and each person occupying or leasing the property or premises of another who maintains, permits, or allows a public nuisance to exist on the property, after reasonable notice in writing from a health officer, district attorney, city attorney, or city prosecutor to remove, discontinue, or abate the public nuisance has been served upon the person, is guilty of a misdemeanor. The existence of the public nuisance for each and every day after the service of the notice is a separate and distinct offense, and it is the duty of the district attorney, or the city attorney or city prosecutor of any city the charter of which imposes the duty upon the city attorney or city prosecutor to prosecute state misdemeanors, to continuously prosecute all persons guilty of violating this section until the nuisance is abated and removed.

(Amended by Stats. 2017, Ch. 299, Sec. 1. (AB 1418) Effective January 1, 2018.)

HEALTH & SAFETY CODE sections 17910 et seq. – The State Housing Law

Health & Safety Code § 17920.3.

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

(1) Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.

(2) Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.

(3) Lack of, or improper kitchen sink.

(4) Lack of hot and cold running water to plumbing fixtures in a hotel.

(5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.

(6) Lack of adequate heating.

(7) Lack of, or improper operation of required ventilating equipment.

(8) Lack of minimum amounts of natural light and ventilation required by this code.

(9) Room and space dimensions less than required by this code.

(10) Lack of required electrical lighting.

(11) Dampness of habitable rooms.

(12) Infestation of insects, vermin, or rodents as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the infestation can be determined by a code enforcement officer, as defined in Section 829.5 of the Penal Code, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction.

(13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.

(14) General dilapidation or improper maintenance.

(15) Lack of connection to required sewage disposal system.

(16) Lack of adequate garbage and rubbish storage and removal facilities, as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the lack of adequate garbage and rubbish removal facilities can be determined by a code enforcement officer as defined in Section 829.5 of the Penal Code.

(b) Structural hazards shall include, but not be limited to, the following:

(1) Deteriorated or inadequate foundations.

(2) Defective or deteriorated flooring or floor supports.

(3) Flooring or floor supports of insufficient size to carry imposed loads with safety.

(4) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.

(5) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.

(6) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.

(7) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.

(8) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.

(9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

(c) Any nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly.

(e) All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly, and that is free of cross connections and siphonage between fixtures.

(f) All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly.

(g) Faulty weather protection, which shall include, but not be limited to, the following:

(1) Deteriorated, crumbling, or loose plaster.

(2) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.

(3) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.

(4) Broken, rotted, split, or buckled exterior wall coverings or roof coverings.

(h) Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

(i) All materials of construction, except those that are specifically allowed or approved by this code, and that have been adequately maintained in good and safe condition.

(j) Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.

(k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code.

(l) All buildings or portions thereof not provided with adequate exit facilities as required by this code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

When an unsafe condition exists through lack of, or improper location of, exits, additional exits may be required to be installed.

(m) All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

(n) All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies.

(o) Inadequate structural resistance to horizontal forces.

“Substandard building” includes a building not in compliance with Section 13143.2.

However, a condition that would require displacement of sound walls or ceilings to meet height, length, or width requirements for ceilings, rooms, and dwelling units shall not by itself be considered sufficient existence of dangerous conditions making a building a substandard building, unless the building was constructed, altered, or converted in violation of those requirements in effect at the time of construction, alteration, or conversion.

(Amended by Stats. 2015, Ch. 720, Sec. 3. (SB 655) Effective January 1, 2016.)

Health & Safety Code § 17920.5

As used in this part “local appeals board” means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the building requirements of the city or county. In any area in which there is no such board or agency, “local appeals board” means the governing body of the city or county having jurisdiction over such area.

(Added by Stats. 1961, Ch. 1844.)

Health & Safety Code § 17920.6.

As used in this part, “housing appeals board” means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the requirements of the city or county relating to the use, maintenance, and change of occupancy of hotels, motels, lodging houses, apartment houses, and dwellings, or portions thereof, and buildings and structures accessory thereto, including requirements governing alteration, additions, repair, demolition, and moving of such buildings if also authorized to hear such appeals. In any area in which there is not such a board or agency, “housing appeals board” means the local appeals board having jurisdiction over such area.

(Added by Stats. 1977, Ch. 847.)

Health & Safety Code § 17980.

(a) If a building is constructed, altered, converted, or maintained in violation of any provision of, or in violation of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to this part, the building standards published in the California Building

Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in a building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance or violation, or a notice to abate with a shorter period of time if deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure, institute appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

...

(c) (1) Whenever the enforcement agency has inspected or caused to be inspected a building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done within the period required by the notice.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element....

(Amended by Stats. 2014, Ch. 81, Sec. 1. (SB 1167) Effective January 1, 2015.)

Health & Safety Code § 17980.10.

(a) An enforcement agency that properly declares any dwelling a nuisance and, using the notice requirements and procedures specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations, confirms the declaration by resolution of its governing board shall be deemed to have acquired jurisdiction to abate the nuisance by repairing or causing to have repairs made to the property, by razing or removing the dwelling or in any other way causing the nuisance to be abated.

(b) The enforcement agency shall keep an itemized account of all of the expenses involved in abating the nuisance, including the razing or removing of the dwelling. The enforcement agency shall cause to be posted conspicuously on the property where the nuisance was abated, repairs were made, or where the dwelling was razed or removed, an expense statement. This statement shall be verified by the officer of the enforcement agency in charge of doing the work, showing the reasonable gross and net expense of the abatement actions taken by the agency, including the expense of inspections; repairs, if any; the cost of the razing or removing of the building, if applicable; and any other costs of abatement, together with a notice of the time and place when and where the statement shall be submitted to the governing board of the enforcement agency for approval and confirmation. In addition to being posted on the property, this statement shall be sent by certified mail to each owner and other interested party,

as specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations.

(c) At the meeting noticed pursuant to subdivision (b), the governing board shall consider any objections or protests, if any, that may be raised by the property owner liable to be assessed for the cost of the work, or by any other interested persons. If the governing board confirms the statement of costs of abatement, those costs shall be the obligation of each owner of the property to pay to the public entity that has incurred them.

(d) Notwithstanding any other provision of law, any hearing required under this section shall be conducted in accordance with requirements adopted by the enforcement agency that are in substantial compliance with those contained in Chapter 13 (commencing with Section 1301), or the successor provisions to that chapter, of the most recent edition of the Uniform Housing Code of the International Conference of Building Officials or as specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations.

(Added by renumbering Section 17980.8 (as added by Stats. 1989, Ch. 1194) by Stats. 2003, Ch. 474, Sec. 6. Effective January 1, 2004.)

Health & Safety Code § 17995.

Any person who violates any of the provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, or any other rule or regulation promulgated pursuant to the provisions of this part is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment not exceeding six months, or by both such fine and imprisonment.

(Amended by Stats. 1983, Ch. 1092, Sec. 162. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

CODE OF CIVIL PROCEDURE section 731 – Judicial Abatement

Code of Civil Procedure § 731

An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as defined in Section 3479 of the Civil Code, and by the judgment in that action the nuisance may be enjoined or abated as well as damages recovered therefor. A civil action may be brought in the name of the people of the State of California to abate a public nuisance, as defined in Section 3480 of the Civil Code, by the district attorney or county counsel of any county in which the nuisance exists, or by the city attorney of any town or city in which the nuisance exists. Each of those officers shall have concurrent right to bring an action for a public nuisance existing within a town or city. The district attorney, county counsel, or city attorney of any county or city in which the nuisance exists shall bring an action whenever directed by the board of supervisors of the county, or whenever directed by the legislative authority of the town or city.

(Amended by Stats. 2010, Ch. 570, Sec. 2. (AB 1502) Effective January 1, 2011.)

GOVERNMENT CODE section 25845 – Administrative Abatement

Government Code § 25845

(a) The board of supervisors, by ordinance, may establish a procedure for the abatement of a nuisance. The ordinance shall, at a minimum, provide that the owner of the parcel, and anyone known to the board of supervisors to be in possession of the parcel, be given notice of the abatement proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county. However, nothing in this section prohibits the summary abatement of a nuisance upon order of the board of supervisors, or upon order of any other county officer authorized

by law to summarily abate nuisances, if the board or officer determines that the nuisance constitutes an immediate threat to public health or safety.

(b) In any action to abate a nuisance, whether by administrative proceedings, judicial proceedings, or summary abatement, the owner of the parcel upon which the nuisance is found to exist shall be liable for all costs of abatement incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred in the physical abatement of the nuisance. Recovery of costs pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

(c) A county may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the county if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the county elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the county in the action or proceeding.

(d) If the owner fails to pay the costs of the abatement upon demand by the county, the board of supervisors may order the cost of the abatement to be specially assessed against the parcel. The assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.

(e) If the board of supervisors specially assesses the cost of the abatement against the parcel, the board also may cause a notice of abatement lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered by the board of supervisors and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost.

(f) However, if the board of supervisors does not cause the recordation of a notice of abatement lien pursuant to subdivision (e), and any real property to which the costs of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or a lien on a bona fide encumbrancer for value has been created and attaches to that property, prior to the date on which the first installment of county taxes would become delinquent, then the cost of abatement shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.

(g) Recordation of a notice of abatement lien pursuant to subdivision (e) has the same effect as recordation of an abstract of a money judgment recorded pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The lien created has the same priority as a judgment lien on real property and continues in effect until released. Upon order of the board of supervisors, or any county officer authorized by the board of supervisors to act on its behalf, an abatement lien created under this section may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.

(h) The board of supervisors may delegate the hearing required by subdivision (a), prior to abatement of a public nuisance, to a hearing board designated by the board of supervisors. The hearing board shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the board of supervisors.

(i) The board of supervisors may, by ordinance, delegate to a hearing officer appointed pursuant to Section 27720 the powers and duties specified by this section.

(Amended by Stats. 1996, Ch. 718, Sec. 1. Effective January 1, 1997.)

GOVERNMENT CODE sections 27720 et seq. – Hearing Officers, GC 25845 (Administrative Abatement)

Government Code § 27720.

The board of supervisors of any county may establish the office of county hearing officer. The duties of the office are to conduct hearings for the county or any board, agency, commission, or committee of the county.

(Amended by Stats. 1985, Ch. 617, Sec. 4.)

Government Code § 27721.

When a state law or local ordinance provides that a hearing be held or that findings of fact or conclusions of law be made by any county board, agency, commission, or committee, the county hearing officer may be authorized by ordinance or resolution to conduct the hearing; to issue subpoenas; to receive evidence; to administer oaths; to rule on questions of law and the admissibility of evidence; and to prepare a record of the proceedings.

(Amended by Stats. 1985, Ch. 617, Sec. 5.)

Government Code § 27722.

(a) If the hearing officer is authorized to decide a matter upon which a hearing has been held pursuant to Section 27721, the officer shall render a written decision, including any findings or conclusions required for that decision, and submit the decision and the record to the clerk of the local body on whose behalf the hearing was held.

(b) If the hearing officer is not authorized to decide a matter upon which a hearing has been held pursuant to Section 27721, the officer shall prepare a recommended decision, including any findings or conclusions required for that decision, and shall submit that recommendation and the record to the clerk of the local body on whose behalf the hearing was held. The local body may adopt the recommended findings, conclusions, and decision, or may reject the recommendation and enter its own findings, conclusions, and decision after a review of the record.

(Amended by Stats. 1985, Ch. 617, Sec. 6.)

Government Code § 27723.

The local body may, but need not be present during the proceeding.

(Added by Stats. 1965, Ch. 480.)

Government Code § 27724.

Any county hearing officer, or any deputy or assistant hearing officer, appointed pursuant to this chapter, shall be an attorney at law having been admitted to practice before the courts of this state for at least five years prior to his or her appointment.

(Amended by Stats. 1985, Ch. 617, Sec. 7.)

Government Code § 27725.

Any other local public entity may contract with the county to employ the services of the county hearing officer. The duties and responsibilities of the hearing officer described in Sections 27721 and 27722 shall be set forth in the contract. Reimbursement to the county for the services of a county hearing officer shall be made as provided in the contract. If no provision for reimbursement is contained in the

contract, reimbursement shall be made on a pro rata basis of actual cost to the county in providing the service including salaries, benefits, overhead, and any travel expense.

(Amended by Stats. 1985, Ch. 617, Sec. 8.)

Government Code § 27726.

Such contracting entity is authorized to conduct its hearings in accordance with the provisions of this chapter.

(Added by Stats. 1965, Ch. 480.)

Government Code § 27727.

Any county or other local public entity may contract with the Office of Administrative Hearings of the State of California, and the office is hereby authorized to contract for services for an administrative law judge or a hearing officer to conduct proceedings pursuant to this chapter.

(Amended by Stats. 1985, Ch. 324, Sec. 26.)

Government Code § 27728.

The provisions of this chapter provide an alternative to, and do not supersede, any other provision of law providing for any matter to be heard or determined by a hearing officer.

(Added by Stats. 1985, Ch. 617, Sec. 9.)

GOVERNMENT CODE section 53069.4 – Administrative Fines

Government Code § 53069.4

(a) (1) The legislative body of a local agency, as the term “local agency” is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, 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.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. This subparagraph shall not be construed to apply to cannabis cultivation that is lawfully undertaken pursuant to Section 11362.1 of the Health and Safety Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

- (ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
 - (iii) The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
 - (b) (1) Notwithstanding Section 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 local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, 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 local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency 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 copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.
 - (2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.
 - (3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.
 - (c) 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.
 - (d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.
- (Amended by Stats. 2018, Ch. 316, Sec. 1. (AB 2164) Effective January 1, 2019.)*

GOVERNMENT CODE section 25132 – Maximum Fines for Misdemeanors, Infractions, and Civil Fines
Government Code § 25132

- (a) Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action.
- (b) Every violation that is an infraction is punishable by the following:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year of the first violation.
 - (3) A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year of the first violation.
- (c) Notwithstanding any other law, a violation of local building and safety codes that is an infraction is punishable by the following:
 - (1) A fine not exceeding one hundred thirty dollars (\$130) for a first violation.
 - (2) A fine not exceeding seven hundred dollars (\$700) for a second violation of the same ordinance within one year of the first violation.

(3) (A) A fine not exceeding one thousand three hundred dollars (\$1,300) for each additional violation of the same ordinance within one year of the first violation.

(B) A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b), (c), and (e), a violation of an event permit requirement that is an infraction is punishable by the following:

(A) A fine not exceeding one hundred fifty dollars (\$150) for the first violation of an event permit requirement.

(B) A fine not exceeding seven hundred dollars (\$700) for a second occurrence of the same violation of an event permit requirement by the same owner or operator within three years of the first violation.

(C) A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional occurrence of the same violation of an event permit requirement by the same owner or operator within three years of the first violation.

(2) (A) For purposes of this subdivision, “violation of an event permit requirement” means failure to obtain a permit required for a professionally organized special event on private property that is commercial in nature, or from which the owner or operator derives a commercial benefit.

(B) For purposes of this paragraph, the following definitions apply:

(i) “Commercial in nature” means that a primary purpose of the special event is to derive an economic benefit resulting from the holding of the event through admission charges or sales of merchandise that occur as part of the event.

(ii) “Commercial benefit” means any remuneration received in exchange for allowing the property upon which the event occurs to be used for the event, including any remuneration that results from the rental of the property for a term of less than 31 consecutive days.

(e) (1) Notwithstanding any other law, including subdivisions (b), (c), and (d), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

(A) A fine not exceeding one thousand five hundred dollars (\$1,500) for a first violation.

(B) A fine not exceeding three thousand dollars (\$3,000) for a second violation of the same ordinance within one year.

(C) A fine not exceeding five thousand dollars (\$5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, “short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, “residential dwelling” means a private structure designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a county, or city and county, to establish lower fines for specific violations by ordinance.

(f) A county levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (e), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by a responsible party that the responsible party has made a bona fide effort to comply after the first violation, and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

(Amended by Stats. 2021, Ch. 307, Sec. 1. (SB 60) Effective September 24, 2021.)

GOVERNMENT CODE section 54988 – Fees, Costs & Charges in Liens (No Owner-Occupied Residences)**Government Code § 54988**

(a) (1) In addition to any other remedy provided by law, including the current powers of charter cities, the legislative body of a city, county, or city and county may collect any fee, cost, or charge incurred in any of the following:

(A) The abatement of public nuisances.

(B) The correction of any violation of any law, regulation, or local ordinance that would also be a violation of Section 1941.1 of the Civil Code.

(C) The enforcement of zoning ordinances adopted pursuant to Chapter 4 (commencing with Section 65800) of Division 1 of Title 7 or any other constitutional or statutory authority.

(D) Inspections and abatement of violations of Article 1 (commencing with Section 13100) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code and regulations or ordinances adopted pursuant to that article.

(E) Inspections and abatement of violations of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code) and regulations or ordinances adopted pursuant to that part.

(F) Inspections and abatement of violations of the California Building Standards Code (Title 24 of the California Code of Regulations).

(G) Inspections and abatement related to local ordinances and regulations that implement any of the foregoing.

If the fee, cost, or charge has not been paid within 45 days of notice thereof, the city, county, or city and county may collect the fee, cost, or charge by making the amount of the unpaid fee, cost, or charge a proposed lien against the property that is the subject of the enforcement activity.

Except as provided in subdivision (c), the amount of the proposed lien may be collected at the same time and in the same manner as property taxes are collected. All laws applicable to the levy, collection, and enforcement of ad valorem taxes shall be applicable to the proposed lien, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of enforcement relating to the property shall be transferred to the unsecured roll for collection.

(2) The amount of any fee, cost, or charge shall not exceed the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.

(3) This section shall not apply to owner-occupied residential dwelling units.

(4) This section does not apply to any enforcement, abatement, correction, or inspection activity regarding a violation in which the violation was evident on the plans that received a building permit.

(b) (1) A city, county, or city and county shall provide the owner of the property with written notice in plain language of the proposed lien, a description of the basis for the amounts comprising the lien, a minimum of 45 days after notice to pay the fee, cost, or charge, and an opportunity to appear before the legislative body and be heard regarding the amount of the proposed lien. The notice shall be mailed by certified mail to the last known address of the owner of the property.

(2) In any city, county, or city and county, the legislative body may delegate the holding of the hearing required by paragraph (1) to a hearing board designated by the legislative body. The hearing board may be the housing appeals board established pursuant to Section 17920.5 of the Health and Safety Code or any other body designated by the legislative body. The hearing board shall make a written recommendation to the legislative body which shall include factual findings based on evidence introduced at the hearing. The legislative body may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the legislative body. Notice in writing of

the de novo hearing shall be provided to the property owner at least 10 days in advance of the scheduled hearing.

(c) If the legislative body determines that the proposed lien authorized pursuant to subdivision (a) shall become a lien, the body may also cause a notice of lien to be recorded. This lien shall attach upon recordation in the office of the county recorder of the county in which the property is situated and shall have the same force, priority, and effect as a judgment lien, not a tax lien. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, set forth the date upon which the lien was created against the property, and include a description of the real property subject to the lien and the amount of the lien.

(Amended by Stats. 2003, Ch. 474, Sec. 1. Effective January 1, 2004.)

**STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS**

DRAFT Resolution

No 2020-

**A Resolution Approving County Code Amendment No. 2019-218
for Code Compliance Procedures, including Amendments to
County Code Title 1 (General Provisions), Title 3 (Revenue and
Finance), Title 8 (Health and Safety) and Title 17 (Zoning)**

WHEREAS, Mariposa County establishes local land use, development and permitting regulations in the Mariposa County Code, including zoning, building and environmental health regulations and marijuana regulations; and

WHEREAS, Mariposa County is responsible for enforcement of these local regulations as well as state law (applicable codes); and

WHEREAS, property owners in the county are responsible for maintaining their properties in compliance with applicable codes; and

WHEREAS, Mariposa County Code establishes code enforcement procedures and requirements. These procedures and requirements are generally effective for cooperative property owners; however, they are not effective or efficient or economical for non-cooperative property owners; and

WHEREAS, pursuing code compliance for violations involving non-cooperative property owners can consume significant staff time, including County Counsel staff time. Occasionally, Mariposa County Superior Court action is required, necessitating outside counsel assistance; and

WHEREAS, the costs for staff time and outside counsel assistance for the code compliance program is a County general fund expense, paid for by the county taxpayers and county transient occupancy tax income; and

WHEREAS, there are many unresolved code compliance cases throughout Mariposa County; and

WHEREAS, existing and unresolved code compliance cases can negatively affect off-site property owners and off-site property values, and can result in environmental hazards including water quality hazards, public health and safety hazards, unsafe buildings,

unsafe grading, negative impacts to the County's rural character and scenic quality, unfair business advantages, and increased wildland fire hazards; and

WHEREAS, based on limitations of the County's current code compliance enforcement provisions, the County has pursued code amendments to provide more effective, efficient and less costly administrative enforcement procedures; and

WHEREAS, these amendments are known as County Code Amendment No. 2019-218; and

WHEREAS, County Code Amendment No. 2019-218 include amendments to Title 1, Title 3, Title 8 and Title 17 of County Code; and

WHEREAS, County Code Amendment No. 2019-218 will provide:

- 1) Authority and procedural requirements for Administrative Citations. An administrative citation is a civil citation for a code violation, which establishes requirements for remedying the violation and sets a fine and fee to be paid by the responsible party. Because the county's primary interest is in compliance (and not financial penalties), the amendments include provisions for staff to waive the administrative (financial) penalties, if the property owner is cooperative and remedies the violation within 30 days, or a mutually agreed upon deadline via a compliance agreement. The amendments include appeal rights, and the ability for a property owner to request a hardship waiver for advanced deposit fees for an appeal.
- 2) Authority and procedural requirements for Abatement of Nuisances. Abatement means to correct, destroy, remove, repair, replace or otherwise remedy the condition which is a nuisance. Nuisances are defined. The code establishes authority and procedural requirements for the county to issue a notice and order to abate a nuisance. The amendments include provisions for an extension of time for a responsible party to complete the required abatement. The amendments include appeal rights and processes. The amendments allow the county to abate the nuisance, should the responsible party fail to do so.
- 3) Authority and procedural requirements for the county to recover the costs for a compliance action from the responsible party, so that the county's general fund does not bear these costs (including county taxpayers and/or the county's transient occupancy tax income).
- 4) Internal consistency in County Code.
- 5) Authority to withhold development permits on properties where there is a violation (unless the permit is related to or necessary for remedying the violation).
- 6) Requirements that a code official only enter a premise at reasonable times to perform inspections.

- 7) Requirements that a code official receive consent from a responsible party or property owner to enter a property to perform inspections; that if entry is denied, an inspection warrant shall be secured, except under exigent circumstances (where exigent circumstances is defined as an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property or the environment).
- 8) Authority for staff to choose which alternative enforcement procedure or procedures to use on any given case.

WHEREAS, a duly noticed Board of Supervisors public hearing was scheduled for the project for the 19th day of May 2020 and this hearing was cancelled due to the COVID-19 pandemic; and

WHEREAS, a duly noticed Planning Commission public hearing was scheduled and noticed for the Title 17 *portion* of the project for the 9th day of October 2020; and

WHEREAS, the Planning Commission's consideration of just a portion of County Code Amendment No. 2019-218 was based on authority established by County Code Section 2.52.180 Applications—Scope of Matters to be Heard by Commission And Its Committees. The Planning Commission does not have authority to review and make recommendations on amendments to Title 1, Title 3 or Title 8 of County Code; and

WHEREAS, the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record regarding the Title 17 *portion* of County Code Amendment No. 2019-218, including the Staff Report packet, testimony presented by the public, staff's recommendations and the proposed environmental determination; and

WHEREAS, the Planning Commission adopted Resolution No. 2020-014, recommending that the Board of Supervisors approve the Title 17 *portion* of County Code Amendment No. 2019-218; and

WHEREAS, during deliberation, the Commission:

1. recommended that the Board of Supervisors review the impacts of the program after one year of implementation; if the program isn't resulting in achievement of the Board's stated objectives, the Board can consider amendments to or revocation of the program;
2. noted the impacts of code compliance cases not being resolved timely has significant potential environmental and public health and safety consequences; the County needs authority and regulations to get code compliance cases resolved timely;
3. noted the importance of staff working with a property owner, such that fees would not be imposed if there is progress being made toward resolution of the case; and

WHEREAS, a Commissioner expressed his concern that the appeal process for administrative citations doesn't include the ability to appeal to an elected official; the appeal is to an appointed hearing officer; and

WHEREAS, a duly noticed Board of Supervisors public hearing was scheduled for the project for the 20th day of October 2020; and

WHEREAS, the Planning Department prepared environmental documents in accordance with the California Environmental Quality Act and local administrative procedures; and,

WHEREAS, a Staff Report packet was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and,

WHEREAS, the Board of Supervisors did hold a public hearing on the noticed date and considered all the information in the public record, including the Staff Report packet, testimony presented by the public, staff's recommendations and the proposed environmental determination.

NOW BE IT THEREFORE RESOLVED THAT, the Board of Supervisors does hereby approve County Code Amendment No. 2019-218 for Code Compliance Procedures. The amendment text is included as Exhibit 1 through Exhibit 5 of this resolution.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors does hereby establish their primary objectives in approving this project to be:

- 1) to obtain code compliance and
- 2) to have the responsible party or property owner complete the requirements to obtain code compliance.

The ability to assess fines and fees may incentivize timely response by the responsible party or property owner. The ability of the county to complete abatement of a nuisance is a final, but not preferred, option to obtain code compliance.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors does hereby order that this ordinance, which establishes new procedures, shall be applicable to existing unresolved code compliance cases as well as new code compliance cases.

BE IT FURTHER RESOLVED THAT, project approval is based on the following findings supported by substantial evidence in the public record.

1. **Finding:** The amendment is in the general public interest and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment is in the general public interest, as it provides additional alternative procedures for the county to utilize to obtain compliance with applicable codes established for land use, development and permitting regulations, including zoning, building and environmental health regulations and marijuana regulations. These regulations are adopted to ensure the general public's health, safety, peace, and welfare and to protect the environment. The County's current code enforcement procedures and requirements are generally effective for cooperative property owners however, they are not effective or efficient or economical for non-cooperative property owners. Pursuing code compliance for violations of applicable codes involving non-cooperative property owners can consume significant staff time, including county counsel staff time. Occasionally, Mariposa County Superior Court action is required, necessitating outside counsel assistance. The costs for staff time and outside counsel assistance for the code compliance program is a county general fund expense, paid for by the county taxpayers and the county transient occupancy tax income. There are many existing and unresolved code compliance cases throughout Mariposa County, which can negatively affect off-site property owners and off-site property values, and can result in environmental hazards including water quality hazards, public health and safety hazards, unsafe buildings, unsafe grading, negative impacts to the County's rural character and scenic quality, unfair business advantages, and increased wildland fire hazards. This amendment, to provide additional alternative procedures to obtain compliance with applicable codes has no potential to have an adverse effect on the general public health, safety, peace, and welfare, and in fact is expected to have a positive effect. Code compliance is expected to be obtained more quickly and efficiently, and with less cost to the county. More timely code compliance will minimize impacts to off-site property owners and off-site property values, environmental hazards, public health and safety hazards, unsafe buildings, unsafe grading, negative impacts to the County's rural character and scenic quality, unfair business advantages and increased wildland fire hazards.

2. Finding: The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long-term guide for county development and a short-term basis for day-to-day decision making.

Evidence: The State of California requires every county to adopt a legally adequate General Plan, containing mandatory elements. The California Supreme Court calls the General Plan the "constitution" of a County, and it serves as more than a document regulating land use. The General Plan provides the long-range vision and policy direction defining what the County is and wants to become. The General Plan comprises the written adopted policies of the Board of Supervisors with input from County residents. The General Plan establishes policies to guide growth and development in the county. The General Plan's policies are implemented by regulations, including those established for land use, development and permitting. Because the project's code amendments will assist the county in obtaining code compliance with

applicable codes more effectively and efficiently, it can be found that the project improves the General Plan.

3. Finding: That amendment conforms to the requirements of state law and county policy.

Evidence: This project has been processed in accordance with State law and county policy. The amendment ensures the County's codes establishing rules and procedures to obtain compliance are internally consistent and consistent with State law.

4. Finding: That the amendment is consistent with other guiding policies, goals, and standards of the Mariposa County General Plan.

Evidence: This project amends County Code to add procedures for administrative citations and abatement of nuisances, and to ensure the code is internally consistent. This project, to provide alternative code compliance procedures, is consistent with County General Plan overarching policies and goals to maintain the county's rural character. If county regulations, which implement General Plan policies, are not uniformly and consistently implemented and applied, the plan policies, goals and standards cannot be achieved.

5. Finding: County Code Amendment Application No. 2019-218 is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2), CEQA Guidelines (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15061(b)(3), CEQA Guidelines (there is no possibility the activity in question may have a significant effect on the environment).

Evidence: This project amends County Code to add procedures for administrative citations and abatement of nuisances and to ensure the code is internally consistent. The code amendments do not entail or result in any construction or land disturbing activities, and it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment; consequently, the project is not subject to environmental review. In addition to the general exemptions listed above, the following categorical exemption applies: Categorical Exemptions Section 15308, CEQA Guidelines (actions taken as authorized by local ordinance to assure protection of the environment).

BE IT FURTHER RESOLVED THAT, the Board of Supervisors directs staff to file a Notice of Exemption for the project.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect on the effective date of Mariposa County Ordinance No. ___, an Ordinance Adding Chapter 1.40 Administrative Citations and Chapter 1.42 Abatement of Nuisances in Title 1 of County

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Code, Mariposa County Ordinance No. ___, an Ordinance Adding Sections 3.36.220 and 3.36.230 to Chapter 3.36 of Mariposa County Code, Mariposa County Ordinance No. ___, an Ordinance Amending Chapter 8.56 of Mariposa County Code Which Regulates Medical Marijuana Cultivation to Ensure Consistency with Chapters 1.40 and 1.42 of the Mariposa County Code, and Mariposa County Ordinance No. ___, an Ordinance Adding Sections 17.144.110 and 17.1140120 to Chapter 17.144 of Mariposa County Code.

BE IT FURTHER RESOLVED THAT, this action of County Code Amendment No. 2019-218 is based on the Staff Report packet to the Board of Supervisors, including all attachments, all of which are hereby incorporated into the resolution by reference. The Board's action is supported by evidence in the record, including the history, basis and authority for establishing new procedures to address code violations in Mariposa County.

BE IT FINALLY RESOLVED THAT, if any section, subsection, sentence, clause, word, phrase or finding of this resolution is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this resolution. The Board of Supervisors hereby declares each section, subsection, sentence, clause, word, phrase or finding is severable.

ON MOTION BY Supervisor _____, seconded by Supervisor _____, this resolution duly passed and adopted this 20th day of October 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kevin Cann, Chair
Mariposa County Board of Supervisors

Attest:

René La Roche
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel

Version 10/13/2020

Exhibit 1

(All text in this chapter is new text to County Code)

Chapter 1.40 of Title 1 General Provisions of the Mariposa County Code is added as follows:

1.40 Administrative Citations

1.40.010 Purpose, Findings, and Intent

1.40.020 Applicability

1.40.030 Administrative Enforcement Authority

1.40.040 Definitions

1.40.050 Authority; Fines and Fees

1.40.060 Contents of Citation

1.40.070 Service of Citation

1.40.080 Authority to Allow for Postponement of Imposition of Fines and Fees

1.40.090 Satisfaction of Administrative Citation

1.40.100 Appeal of Administrative Citation

1.40.110 Hearing Officer

1.40.120 Hearing Procedures

1.40.130 Hardship Waivers

1.40.140 Hearing Officer's Decision

1.40.150 Failure to Pay Fine and Fee

1.40.160 Right to Judicial Review

1.40.170 Notices

1.40.180 Access by Authorized Officer

1.40.190 General Provisions

1.40.010 Purpose, Findings, and Intent

- A. The board of supervisors finds that an appropriate method for enforcement of various violations of applicable code(s), defined in Section 1.40.040 (Definitions), below, and referred to in this title as "applicable code(s)," is an administrative citation program that will reduce the burden on the judicial system while providing due process for those cited. The board of supervisors also finds that there is a need for an alternative to Chapter 1.42 (Abatement of Nuisances) as a method of enforcement for various violations of applicable code(s), consistent with the provisions of Government Code Section 25845 which is determined to be necessary for the protection of the public health, safety, and welfare. Finally, the board of supervisors finds there is a need for an alternative to Chapter 17.144 as a method of enforcement for various violations of applicable code(s) to achieve the goals identified in Subsection 1.40.010.D (Purpose, Findings, and Intent), below.
- B. The procedures established in this chapter are in addition to criminal, civil, or other legal remedies that may be available to the county to enforce violations of applicable code(s).

- C. The board of supervisors finds and determines that enforcement of the provisions of applicable code(s) are matters of concern to the citizens of Mariposa County.
- D. The board of supervisors finds that the adoption and implementation of the administrative citation program is within the power and authority of Mariposa County and will achieve the following goals:
 - 1. To promote and protect the public health, safety, and welfare of the citizens of Mariposa County;
 - 2. To ensure compliance with the applicable code(s) in a more timely and efficient manner;
 - 3. To provide for an administrative process to appeal an administrative citation and the imposition of fines and fees; the administrative process will fully conform with due process and provide those cited with the right to an appeal hearing;
 - 4. To provide a method to hold parties accountable when they fail or refuse to comply with the provisions of the applicable code(s); and
 - 5. To reduce the burden on the judicial system.
- E. Use of this chapter shall be at the sole discretion of the county.

1.40.020 Applicability

The code official responsible for enforcing the applicable code(s), or designee, may use the procedures specified in this chapter to enforce the provisions of the applicable code(s). In the case of multiple violations involving two or more county departments, a lead department may be assigned by mutual agreement of the responsible departments, which department shall be responsible for taking the lead role in coordinating all enforcement activities and processes. The code official shall have the discretion to seek the correction of any violation(s) using administrative citation(s), abatement, criminal prosecution, or civil litigation, alone or in any combination.

1.40.030 Administrative Enforcement Authority

The code official shall have the authority and powers necessary to determine whether a violation of any applicable code(s) exists and the authority to take appropriate action to gain compliance with the provisions of any applicable code(s). These powers include the power to issue notices of violation, administrative citations, and notices and orders; the power to assess civil fines and administrative fees; the power to inspect private and public property; and the power to use the administrative remedies which are available under the Mariposa County Code, applicable state and federal codes and regulations, and conditions on entitlements or permits.

1.40.040 Definitions

For the purpose of this chapter, certain words or phrases are defined and certain provisions are to be construed as specified in this section:

“Abate” means to correct, destroy, remove, repair, replace, or otherwise remedy the condition in question by such means and in such manner and to such an extent as the county shall determine is necessary in the interests of the health, safety, and welfare of Mariposa County residents.

“Applicable code(s)” means the Mariposa County Code (MCC), applicable state and federal codes and regulations, Mariposa County resolutions, and conditions on entitlements or permits.

“Board” means the board of supervisors of Mariposa County.

“Burn debris” means debris, including ash, resulting from a fire that either partially or completely burned a structure; or debris, including ash, resulting from burning materials which are prohibited from being burned pursuant to California Health and Safety Code Section 41800.

“CCR” means the California Code of Regulations.

“Chapter” means a chapter of the Mariposa County Code, unless otherwise noted.

“Citation” or **“administrative citation”** means a civil citation issued in compliance with this chapter stating that there has been a violation of one or more provisions of the applicable code(s) defined in Section 1.40.040 (Definitions), below, and setting the amount of the fine and fee to be paid by the responsible party.

“Civil Code” means the California Civil Code.

“Code official” means the designee of the county building director, the county health and human services director, the county planning director, the county sheriff, or any other county department responsible for code enforcement, and who is responsible for enforcement of the applicable code(s).

“Compliance agreement” means a legal and binding contract between the code official and the responsible party to establish parameters and requirements for the correction of a violation or violations, including but not limited to, specific performance duties, responsibilities, permits, dates and deadlines, and consequences of non-compliance.

“Costs of abatement” means the actual costs paid or incurred by the county in connection with fully abating the code violation or nuisance matter, including but not limited to the following: costs of investigation, costs incurred for all inspections and re-inspections, costs of preparation of notices, specifications, and contracts, and inspecting the work performed under contract, costs of mailing and printing notices and documents, personnel costs charged at the fully burdened hourly rate (includes overhead) incurred in preparation for any hearing and appearing at the hearing itself, recording fees, and the cost, including staff costs, expended or incurred by the county in abating the conditions or violations in compliance with any order under this chapter (including on-site and off-site abatement activities, as applicable), including but not limited to any penalties and interest, permitting costs, landfill costs, and costs for the involvement of required licensed professionals.

“County” means the County of Mariposa.

“Days” means calendar days, unless stated otherwise in this chapter.

“Director” means the administrative head of the county department responsible for enforcing the provisions of the applicable code(s) being violated, or the designee of the director.

“Domicile” means a principal place of residence of an individual.

“Dwelling, single-family” means a residential structure located on a single parcel of land for occupancy by one single household. This definition also includes manufactured housing and mobile homes.

“Government Code” means the California Government Code.

“HCD” means the California Department of Housing and Community Development.

“Health and Safety Code” means the California Health and Safety Code.

“Inspection Warrant” means an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulations relating to building, fire, safety, plumbing, electrical, health, labor, or zoning. This definition also includes requirements established by California Code of Civil Procedure Title 13, sections 1822.50-1822.60.

“Law” denotes applicable federal law, the Constitution and statutes of the State of California, the ordinances of Mariposa County, and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

“Legal dwelling” means any structure, manufactured home, or mobile home used and occupied for permanent human habitation or intended to be so used, that complies with all required county and/or HCD approvals and permits, including a “certificate of occupancy” issued by the building department or a “mobile home installation acceptance” issued by HCD.

“Marijuana,” also known as **“Cannabis,”** shall have the meanings defined in applicable codes, including MCC Chapter 8.56 and/or MCC Title 17.

“May” is permissive.

“MCC” means the Mariposa County Code.

“Month” means a calendar month.

“Must” and **“shall”** are each mandatory.

“Notice of violation” means and includes an administrative citation, and/or a notice and order to abate, and/or a notice of unsafe condition, and/or a notice of intent to find violation, and/or a notice of violation, and/or a correction notice.

“Number” The singular number includes the plural number, and the plural the singular, unless the natural construction of the words indicates otherwise.

“Occupant” means anyone in possession, control, or having charge of a subject property.

“Occurrence” means something that happens, as an individual event or incident. In the case of marijuana, each plant over the legal limit would be considered a separate occurrence.

“Owner” means the property owner or owners as shown on the current assessment role.

“Person” includes an association, business, club, company, corporation, joint stock company, joint venture, organization, natural person, partnership, trust, or the agent, employee, lessee, manager, officer, or servant of any of them.

“Permanent residential occupancy” means residential occupancy of or in any place or structure for fifteen (15) cumulative nights or more.

“Personal property” includes chattels, goods, money, things in action, and evidences of debt.

“Premises” or **“property”** means any building, lot, parcel, real estate, structure, or land or a portion thereof, whether improved or unimproved.

“Primary residence,” also known as a place of domicile, means a dwelling where a person usually lives and is considered the legal residence of that person for purposes of income tax calculation, acquiring a mortgage, or voting.

“Public official” means the county building director, the county health and human services director, the county planning director, the county sheriff, or the administrative head of any other county department responsible for code enforcement, or their respective designees, or any other individual or body appointed by the board of supervisors to enforce any of the applicable codes, and who or which is authorized to administer this chapter.

“Recreational vehicle” or **“RV”** means a motor vehicle or trailer which includes living quarters (designed for seasonal or temporary human habitation) as defined by the California Vehicle Code or the California Health and Safety Code. Examples of a recreational vehicle include, but are not limited to, a motorhome, campervan, caravan (also known as a travel trailer, camper trailer or camp trailer), house car, fifth-wheel trailer, popup camper, truck camper, boat, park model, and watercraft.

“Responsible party” means any individual, business, or entity responsible for creating, causing, maintaining, or permitting the nuisance activity or condition, or the violation of any applicable code(s), and includes, but is not limited to, the property owner(s), lessee(s), possessor(s), or tenant(s) of real property, the president or other officer of a corporation, the owner(s) or managing member(s) of a limited liability company, business owner(s) and/or manager(s), or the parent(s) or the legal guardian(s) of any person(s) under the age of eighteen (18) years who violates or maintains a violation of any applicable code(s).

“Section” means a section of the Mariposa County Code, unless otherwise noted.

“State” means the State of California.

“Temporary or seasonal human habitation” means occupancy of or in any place or structure or vehicle for fourteen (14) cumulative nights or less in any ninety (90) day period.

“USPS” means the United States Postal Service.

“Vacation rental” shall have the same meaning as established by MCC Title 17. The definition and allowance of a vacation rental in Mariposa County excludes a recreational vehicle, a park trailer, a tent, a tent cabin, a yurt, a tiny home which isn't established through a state or county permit process, a tree house and any other structure which is not intended for permanent human habitation and has not been approved for permanent residential occupancy by the county building department or HCD.

“Violation” means any act (or failure to act) that fails to abide by any applicable code. The terms violation (singular) and violations (plural) may be interchanged and shall have the same meaning.

“Year” means 365 days.

1.40.050 Authority; Fines and Fees

- A. Every person holding an interest in real property within the county is required to maintain the property so as not to violate any provisions of this chapter and any applicable code(s). The owner of the property shall remain liable for all violations, regardless of any contract or agreement with any third party regarding the property or the occupation of the property by any third party. Each and every successive owner of property who violates or continues a violation of any provisions of this chapter upon, or in the use of, the property, created by the former owner, is hereby liable in the same manner as the one who first created the violation.
- B. Any person violating any provision of any applicable code(s) may be issued an administrative citation by the code official as provided in this chapter
- C. The code official shall have the authority and power necessary to determine whether a violation of any applicable code(s) exists, the person(s) responsible for the violation(s), and the authority to take appropriate action to gain compliance with the provisions of any applicable code(s). These powers shall include, but not be limited to, the power to issue notices of violation, administrative citations, and notices and orders, the power to assess civil fines (hereinafter referred to as “fine” or “fines”) and administrative fees (hereinafter referred to as “fee” or “fees”), the power to assess late payment fees, the power to assess collection costs, the power to assess inspection and re-inspection fees, the power to inspect private and public property, the authority to enter into a compliance agreement, the authority to record notices, and the power to use the administrative remedies which are available under this title and the applicable code(s).
- D. Each and every day a violation of the applicable code exists constitutes a separate and distinct offense and is subject to the fines and fees specified in Subsection 1.40.050.F (Authority; Fines and Fees), below.
- E. A fine and fee shall be assessed for each and every violation by means of an administrative citation issued by the code official.

- F. The fines and fees shall be assessed in the administrative citation in the following specified amounts:
1. Unless a particular fine or fee is otherwise specified within the relevant section or chapter of the applicable code, or for adopted CCR Title 24 codes specified in Subsection 1.40.050.F.2 (Authority; Fines and Fees), below, all fines or fees shall be assessed as follows:
 - a. A fine not exceeding one hundred dollars (\$100.00) for a first violation, plus a ten (10) percent administrative fee;
 - b. A fine not exceeding two hundred dollars (\$200.00) for a second violation (issuance of a second administrative citation) of the same code provision or permit within a twelve (12) month period of time following the date of the first violation, plus a ten (10) percent administrative fee;
 - c. A fine not exceeding five hundred dollars (\$500.00) for each additional violation (issuance of additional administrative citations) of the same code provision or permit within a twelve (12) month period of time following the date of the first violation, plus a ten (10) percent administrative fee.
 2. Violations of any provision or failure to comply with any requirement of any applicable CCR Title 24 codes are considered to be a misdemeanor. Fines and fees for these violations or failures are to be assessed as misdemeanors as follows:
 - a. A fine not exceeding five hundred dollars (\$500.00) for a first violation, plus a ten (10) percent administrative fee;
 - b. A fine not exceeding seven hundred and fifty dollars (\$750.00) for a second violation (issuance of a second administrative citation) of the same code provision within an eighteen (18) month period of time following the date of the first violation, plus a ten (10) percent administrative fee; and
 - c. A fine not exceeding one thousand dollars (\$1,000.00) for each additional violation (issuance of additional administrative citations) of the same code provision within a twenty-four (24) month period of time following the date of the first violation, plus a ten (10) percent administrative fee.
- G. The code official shall provide a copy of the citation to the department issuing the violation within one (1) working day of the citation being issued in order to ensure that the office is aware of the citation when the citee appears to pay the fine and fee.
- H. All assessed fines and fees shall be payable to the county within thirty (30) days from the date of service of the administrative citation, unless the code official postpones imposition of the fine and fee pursuant to Section 1.40.080 (Authority to Allow for Postponement of Imposition of Fines and Fees), below.

- I. The fines and fees shall be collected by the department issuing the citation and deposited into the county's code compliance account. Monies deposited into the county's code compliance account shall be used to fund cleanups, other compliance and abatement actions, and the costs of the code compliance program.
- J. Any person who fails to pay to the county any fine or fee imposed in compliance with the provisions of this chapter on or before the date that the fine or fee is due shall also be liable for a late payment charge or fee of double the citation amount (double the fines and fees).
- K. The county may collect any past due fine and/or fee and/or late payment charge by use of any available legal means. The county may recover its collection costs.
- L. To the extent permitted by Government Code Section 54988, the county may collect fines, fees, costs, or charges that have not been paid within forty-five (45) days of notice thereof by making the amount of the unpaid fines, fees, costs, or charges a nuisance abatement lien or special assessment against the property that is the primary subject of the enforcement activity.
- M. Any fine and/or fee and/or late payment charge paid in compliance with Subsections 1.40.050.F (Authority; Fines and Fees), above, and 1.40.050.J (Authority; Fines and Fees), above, may be refunded if it is determined upon appeal that the person(s) charged in the administrative citation was/were not responsible for the violation or that there was no violation as charged in the administrative citation.

1.40.060 Contents of Citation

Each administrative citation shall contain all of the following information:

- A. Date, approximate time, and address or definitive description of the location where the violation(s) was/were observed;
- B. Contact information for the department issuing the citation, including phone number and email contact information;
- C. The applicable code(s) violated and a description of the violation(s);
- D. The amount of the fine and fee for the violation(s) and the fact that the county may collect any past due fine and/or fee and/or late payment charge by use of any available legal means. The county may also recover its collection costs.
- E. An explanation of where the fine and fee shall be paid and the time period by which it shall be paid; information regarding the ability to postpone imposition of the fine and fee, if applicable.
- F. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a notice of appeal/request for hearing form to contest the administrative citation; and

- G. The name and signature of the code official and, if possible, the signature of the responsible party.

1.40.070 Service of Citation

An administrative citation on a form approved by the county counsel shall be issued to the responsible party by the code official for violations of any applicable code(s), in any one or more of the three following manners:

- A. **Service of Citation by Mail with a Return Receipt Requested.** The administrative citation may be mailed by the code official to the responsible party by certified mail, with a return receipt requested, and by regular USPS first class mail. If the citation sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned; and/or
- B. **Service of Citation by Posting.** The code official may post the administrative citation on the subject property and/or any real property within the county in which the county has reason to believe that the responsible party has a legal interest, and the posting shall be deemed effective service; and/or
- C. **Service of Citation by Personal Service**
1. The code official may attempt to locate and personally serve the responsible party and seek to obtain the signature of the responsible party on the administrative citation.
 2. If the responsible party served refuses or fails to sign and does not acknowledge the administrative citation, the failure or refusal to sign shall not affect the validity of service of the administrative citation or of any subsequent proceedings.

1.40.080 Authority to Allow for Postponement of Imposition of Fines and Fees

- A. **Mandatory Grace Period.** A responsible party for any continuing violation that pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety shall be given ten (10) days to cure the violation in order to avoid the administrative fine for that violation.
- B. In addition to the mandatory grace period described in subdivision A, the code official shall have the authority to allow for the postponement of the imposition of the fine and fee to allow the responsible party a reasonable amount of time, as determined by the code official, in which to correct the violation(s);
- C. To be eligible for a postponement of the imposition of the fine and fee, the responsible party shall do one of the following:
1. Correct the violation(s), as required by the code official, within the time period established by the code official, which shall not exceed thirty (30) days; or

2. Enter into and complete the requirements of a compliance agreement which shall:
 - a. Specify a schedule within which, and requirements by which, any violation(s) shall be corrected/eliminated; and
 - b. Be confirmed by the signature and date of both the responsible party and the code official; and
 - c. Be executed within the time period set to correct the violation (i.e., not to exceed thirty [30]) days from the date of the administrative citation).
- D. The types of violations not eligible for postponement of imposition of fines and fees include any one or more of the following:
 1. Violation(s) which could result in an immediate risk to the health and safety of occupants, neighbors, and/or the public;
 2. Violation(s) which could result in significant degradation of environmental quality;
 3. Violations which can be corrected immediately at a cost to the responsible party of less than two hundred dollars (\$200.00);
 4. Violations which involve property where the responsible party fails to respond to the code official's request for investigation; and/or
 5. Violations that are the result of, or used to facilitate, the illegal cultivation of cannabis, unless the "innocent owner exemption" applies. The "innocent owner exemption" only applies if all of the following are true:
 - a. The subject property is a rental property.
 - b. The relevant responsible party is the property owner or owner's agent.
 - c. A tenant is in possession of the subject property.
 - d. The relevant responsible party can provide evidence that the rental of lease agreement prohibits the cultivation of cannabis.
 - e. The relevant responsible party did not know that the tenant was illegally cultivating cannabis and no complaint, property inspections, or other information caused the responsible party to have actual notice of the illegal cannabis cultivation.
- E. If the responsible party defaults or fails to comply with the compliance agreement, the fine and fee previously levied would be immediately due, retroactive to the original date of the administrative citation.

1.40.090 Satisfaction of Administrative Citation

- A. Upon receipt of a citation, the responsible party shall do the following:
1. Correct the violation(s) as required by the code official, provide necessary proof (e.g., receipts and or reports from contactors, consultants or other professionals) of correction and/or contact the department issuing the citation to make arrangements for a re-inspection of the subject property to verify that the violation(s) has/have been corrected. Requests for re-inspection shall be in writing and can be submitted in person or by e-mail. In the event multiple departments are involved, the responsible party should refer to the citation itself for the proper contact information.
 2. Pay the fine and fee to the county. Payment shall be within thirty (30) days from the citation date, unless the code official postpones the imposition of the fine and fee pursuant to Subsection 1.40.080.B (Authority to Allow for Postponement of Imposition of Fines and Fees), above. Payment of the fine and fee shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the county.
- B. If the responsible party fails to correct the violation(s), subsequent administrative citations may be issued for the same violation(s). The amount of the fine and fee for failure to correct the violation(s) shall increase at a rate specified in Section 1.40.050 (Authority; Fines and Fees), above.

1.40.100 Appeal of Administrative Citation

- A. Any recipient of an administrative citation may contest that there is or was a violation of any applicable code(s) or that he/she is the responsible party by completing a notice of appeal/request for hearing form and returning it to the department issuing the citation within fifteen (15) days from the date of issuance of the administrative citation, together with an advanced deposit of the fine and fee, as determined by the code official, to the department issuing the violation. Failure to submit a timely notice of appeal/request for hearing form shall constitute a forfeiture of appeal rights.
- B. The notice of appeal/request for hearing form shall:
1. Be submitted in writing;
 2. Contain the name, physical and mailing address, email address, and telephone number of the appellant(s);
 3. Specify the ground(s) upon which the appeal is made;
 4. Be accompanied by the payment of an appeal fee in an amount established by resolution of the board of supervisors;

5. Be accompanied by the advanced deposit of the fine and fee. Alternatively, the responsible party may request an advanced deposit hardship waiver, and/or a request for a hardship waiver to reduce the amount of the administrative fine; and
 6. Be filed with the clerk of the board of supervisors.
- C. Any fine and fee which has been deposited may be refunded if, after a hearing, it is determined that the person(s) charged in the administrative citation was/were not responsible for the violation(s) or that there was/were no violation(s) as charged in the administrative citation.
- D. The county counsel shall have the responsibility of determining if the notice of appeal/request for hearing form was timely submitted and is complete for processing in the following manner:
1. If the notice of appeal/request for hearing form was not timely submitted, it shall be rejected.
 2. If the notice of appeal/request for hearing form does not include sufficient itemization of the issues of the finding, decision or determination being appealed (grounds for appeal), the appeal will not be accepted as complete.
 3. If the county counsel determines that the notice of appeal/request for hearing form is not complete, the appellant shall be so advised by certified mail, with a return receipt requested.
 4. The appellant will have ten (10) days from the date that the county counsel's determination is made to provide the additional information which is needed for completeness.
 5. If the additional information is not provided within ten (10) days, the appeal will not be accepted by the county for processing and the appeal rights of the appellant(s) will be forfeited.

1.40.110 Hearing Officer

- A. The county administrative officer shall designate the hearing officer for the administrative citation appeal hearing. In order to ensure independent judgment, the hearing officer shall not be a current Mariposa County employee.
- B. The employment, performance evaluation, compensation, and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the amount of fines and fees upheld by the hearing officer.
- C. If a hearing officer is unavailable for any reason, the county administrative officer shall schedule the appeal hearing before the board of supervisors. Should the board of supervisors conduct the initial appeal hearing, all provisions contained in this chapter shall apply. The decision of the board shall be final.

1.40.120 Hearing Procedures

- A. **Date of Hearing.** A hearing before the hearing officer shall be set for a date not less than twenty (20) days and not more than ninety (90) days from the date of the notice of appeal/request for hearing being accepted as complete for processing in compliance with the provisions of this chapter. The hearing date may be extended by mutual agreement of the county and the appellant(s).
- B. **Fairness of Hearings.** Hearings required by this chapter shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.
- C. **Evidentiary Rules.** The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence upon which reasonable persons are accustomed to relying upon in the conduct of serious affairs.
- D. **Evidence.** The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the responsible party has caused or maintained the violation(s) of the applicable code(s) on the date(s) specified in the administrative citation.
- E. **Opportunity to Testify.** The responsible party contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation.
- F. **Failure to Appear.** The failure of any appellant to appear at the administrative citation appeal hearing shall result in a forfeiture of the advance deposit of the fine and fee and shall be deemed a failure to exhaust their administrative remedies.
- G. **Prima Facie Evidence.** The administrative citation and any additional documents submitted by the code official shall constitute prima facie evidence of the respective facts contained in those documents.
- H. **Distribution of Report.** If the code official submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report shall be provided to the appellant(s) at least ten (10) days before the date of the hearing.
- I. **Discovery Limitations.** At least ten (10) days before the date of the hearing, the appellant(s) shall be provided with copies of the citation(s), reports and other documents submitted or relied upon by the code official. No other discovery is permitted. Formal rules of evidence shall not apply.
- J. **Continuance of Hearing.** The hearing officer may continue the hearing and request additional information from the code official or the appellant(s) before issuing a written decision.

- K. **Delivery Options.** The appellant(s) may elect to have the documents and information specified in Subsection 1.40.120.H (Hearing Procedures/Distribution of Report), above, Subsection 1.40.120.I (Hearing Procedures/Discovery Limitations), above, and Subsection 1.40.120.J (Hearing Procedures/Continuance of Hearing), above, sent via email instead of postal mail. This option shall be provided on the notice of appeal/request for hearing form.

1.40.130 Hardship Waivers

A. Advance Deposit Hardship Waiver.

1. Any person who intends to submit a notice of appeal/request for hearing form under Section 1.40.100 (Appeal of Administrative Citation), above, and is financially unable to make the advance deposit as required in that section may file a request for an advance deposit hardship waiver.
2. The request shall be filed with the clerk of the board of supervisors and the director of the department issuing the administrative citation at the time of submittal of the notice of appeal/request for hearing form.
3. The requirement of depositing the full amount of the fine and fee as described in Section 1.40.100 (Appeal of Administrative Citation), above, shall be stayed unless and until the director of the department issuing the administrative citation determines not to issue the advance deposit hardship waiver.
4. The director of the department issuing the administrative citation may waive the requirement of an advance deposit only if the appellant(s) submit(s) to the director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director the appellant(s) actual financial inability to deposit with the county the full amount of the fine and fee in advance of the hearing.
5. If the director determines not to issue an advance deposit hardship waiver, the appellant(s) shall remit the deposit to the county within ten (10) days of the date of the decision.
6. The director shall issue a written decision explaining the reasons for his/her determination to issue or not to issue the advance deposit hardship waiver. The written decision of the director shall be final.
7. The written decision of the director shall be mailed within five (5) days of the receipt of the waiver request to the appellant(s) who applied for the advance deposit hardship waiver at the address provided in the application.

B. Hardship Waiver to Reduce Administrative Fine.

1. Pursuant to Government Code section 25132(d), the county may grant a hardship waiver to reduce the amount of an administrative fine upon a showing by the

responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

2. The responsible party's request shall be filed with the clerk of the board of supervisors and the director of the department issuing the administrative citation at the time of submittal of the notice of appeal/request for hearing form.
3. Payment of the full amount of an administrative fine shall be stayed unless and until the director of the department issuing the administrative citation determines not to issue the hardship waiver.
4. The director of the department issuing the administrative citation may waive or reduce the amount of the administrative fine only if the responsible party submit(s) to the director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.
5. If the director determines not to issue an administrative fine hardship waiver, the responsible party shall be responsible for the full amount of the administrative fine.
6. The director shall issue a written decision explaining the reasons for his/her determination to issue or not to issue the administrative fine hardship waiver. The written decision of the director shall be final.
7. The written decision of the director shall be mailed within five (5) days of the receipt of the waiver request to the responsible party who applied for the administrative hardship waiver at the address provided in the application.

1.40.140 Hearing Officer's Decision

- A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision within thirty (30) days of the close of the hearing to uphold, modify, or deny the administrative citation and shall list in the decision the reason(s) for that decision.
- B. If the hearing officer determines that the administrative citation should be upheld, and a fine and fee was deposited with the county, then the fine and fee on deposit with the county shall be retained by the county.
- C. If the hearing officer determines that the administrative citation should be modified, and a fine and fee was deposited with the county, then the amount of the upheld fine and fee on deposit with the county shall be retained by the county and the remainder shall be promptly refunded by the county.

- D. If the hearing officer determines that the administrative citation should be canceled, and a fine and fee was deposited with the county, then the county shall promptly refund the amount of the deposited fine and fee.
- E. If the fine and fee is upheld, in full or in part, and a sufficient amount was not deposited in advance, then the outstanding balance of the upheld portion of the fine and fee shall be paid by the responsible parties to the county within 30 days. All responsible parties shall be jointly and severally liable for the full amount of the upheld fine and fee.
- F. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision by USPS first class mail.
- G. The decision of the hearing officer shall be final with no additional rights of appeal to the county.

1.40.150 Failure to Pay Fine and Fee

The failure of any person(s) to pay the fine and fee assessed by an administrative citation within the time specified on the citation may result in the recording of a nuisance abatement lien or the matter being referred to the county tax collector who will place the fine and fee on the tax rolls as a special assessment. The county may pursue any other legal remedy to collect the fines and fees. The county may also recover all costs related to collection of fines and fees.

1.40.160 Right to Judicial Review

Any person(s) aggrieved by the decision of the hearing officer ("interested party") may obtain review of the administrative decision by filing a petition for review with the Mariposa County Superior Court in compliance with the timelines and provisions specified in Government Code Section 53069.4. If an interested party fails to timely file a notice of appeal, the hearing officer's decision shall be final and that interested party's right to appeal shall be deemed waived and terminated.

1.40.170 Notices

- A. The administrative citation and all notices to be given by this chapter shall be served on the responsible party in compliance with the provisions of this chapter.
- B. Failure to receive any properly served notice specified in this chapter shall not affect the validity of the proceedings conducted in compliance with this chapter.

1.40.180 Access by Authorized Officers

Whenever it is necessary to make an inspection to enforce any provision of this chapter, or whenever the code official has reasonable cause to believe that there exists in any structure or upon any premises any condition in violation of this chapter, the code official may enter the premises at all reasonable times to perform any duty imposed upon the code official by this chapter, provided the code official receives free and voluntary consent from a responsible party. If entry is denied, except under exigent circumstances, an inspection warrant shall be secured.

1.40.190 General Provisions

- A. **Severability.** If any section, subsection, sentence, clause, phrase, or other part of this chapter is for any reason held to be unconstitutional or otherwise invalid, the decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases or other parts be declared unconstitutional or otherwise invalid.
- B. **Liability.** No employee of the county charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to any person or subject property as a result of any act or omission in the discharge of his/her duties.
- C. **Alternative Remedies.** Nothing in this chapter shall be interpreted to prevent prosecution under any other civil, penal, building, fire, or related codes or other titles of the Mariposa County Code. The county reserves the right to pursue any one or more remedies simultaneously or concurrently.
 - 1. **Criminal Prosecution.** If any responsible party fails to correct the violation(s) within the time specified in the notice and order to abate, the code official may:
 - a. Issue a citation as an infraction violation; or
 - b. Request the district attorney to prosecute the matter as a misdemeanor criminal offense.
 - 2. **Civil Litigation.** If any responsible party fails to correct the violation(s) within the time specified in the notice and order to abate, the code official may apply to such court as may have jurisdiction to grant relief that will abate the nuisance, or restrain and enjoin any person from creating or maintaining a nuisance.
- D. **Denial of Permits, Licenses, or Other Entitlements.** Except as otherwise provided by law, the county shall not accept for processing, process, or issue or grant approval of any permit, license, or other entitlements for any subject property for which any notice of violation (as defined in MCC Section 1.40.040, Definitions) has been issued.
 - 1. The county shall withhold processing or accepting for processing any permit, license, or other entitlements for the subject property not necessary to correct violations until a notice of compliance has been issued by the code official.
 - 2. The county may not withhold any permit, license, or other entitlements which are necessary to correct or prevent serious public health and safety conditions.
 - 3. The county shall refuse to issue or grant a permit, license, or other entitlements pursuant to this section whether the applicant(s) was/were the owner(s) of the real property containing a violation of the applicable code(s) at the time of violation or whether the applicant(s) is/are either the current owner(s) or a vendee of the

current owner(s) pursuant to a contract of sale of the real property with or without actual or constructive knowledge of the violation(s) at the time of the acquisition of their/its interest in the subject real property.

4. The county shall provide written notice of its decision to withhold processing or accepting for processing, any permit, license, or other entitlements to the applicant(s) and shall describe the violation(s) and the action(s) necessary to abate the violation(s). The written notice may be recorded in the Mariposa County Official Records.

Exhibit 2

(All text in this chapter is new text to County Code)

Chapter 1.42 of Title 1 General Provisions of the Mariposa County Code is added as follows:

1.42 Abatement of Nuisances

- 1.42.010 Title, Purpose, and Intent
- 1.42.020 Definitions
- 1.42.030 Nuisance - Defined
- 1.42.040 Nuisance - Declared
- 1.42.050 Exceptions
- 1.42.060 Duty and Authority of Code Official
- 1.42.070 Duty to Abate
- 1.42.080 Administrative Procedure for Abating Nuisances
- 1.42.090 Procedure to Appeal Notice and Order to Abate
- 1.42.100 Hearing Procedures
- 1.42.110 Hearing Officer's Decision
- 1.42.120 Appeal of Hearing Officer's Decision
- 1.42.130 Abatement of Nuisance
- 1.42.140 Costs of Abatement
- 1.42.150 Accounting of Costs of Abatement
- 1.42.160 Recovery of Costs of Abatement
- 1.42.170 Notice of Special Assessment or Nuisance Abatement Lien
- 1.42.180 Summary Abatement
- 1.42.190 Legal Fees
- 1.42.200 Monies Collected
- 1.42.210 Access by Authorized Officers
- 1.42.220 Interference with Enforcement Procedures Prohibited
- 1.42.230 Remedies Cumulative
- 1.42.240 Treble Damages
- 1.42.250 General Provisions

1.42.010 Title, Purpose, and Intent

- A. **Title.** This chapter shall be known and cited as "Abatement of Nuisances."
- B. **Purpose and Intent.** The purpose of this chapter is to establish administrative procedures to remove conditions of property hereinafter described and declared to be a nuisance which have a blighting influence on properties in the vicinity and/or are detrimental to the health, safety, and welfare of the residents of or visitors to the county.

- C. **Responsibility for Property Maintenance.** Every responsible party as defined in Mariposa County Code (MCC) Section 1.40.040 (Definitions) is required to maintain property so as not to violate the provisions of this chapter. The owner of a property shall remain liable for violations, regardless of any contract or agreement with any third party regarding the property or the occupation of the property by any third party. Every successive owner of the property who neglects to abate a continuing nuisance upon, or in the use of, the property, created by the former owner, is liable in the same manner as the one who first created it.

1.42.020 Definitions

See MCC Section 1.40.040 (Definitions).

1.42.030 Nuisance - Defined

A nuisance is defined as having any one or more of the following characteristics as determined by the code official:

- A. The presence of garbage, dead animals, burn debris or other comparable material that constitutes a nuisance as determined by the code official;
- B. Agricultural uses conducted in a manner which is inconsistent with proper and accepted customs, standards, and practices or contrary to applicable code(s);
- C. An excessive accumulation of solid waste, including, but not limited to, used appliances, carpeting, furniture, mattresses, and/or tires occupying a total area exceeding the size of a junkyard as defined by MCC Title 17;
- D. The unlawful disposal or burying of solid waste, including, but not limited to, appliances or parts thereof, building materials, cabinets, construction or demolition debris, furniture, garbage, refuse, salvage materials, tires, and/or other household fixtures, at any place other than an authorized solid waste facility;
- E. Causes, maintains, or permits solid waste to be deposited within the county in any manner that violates the provisions of this chapter;
- F. Causes, maintains, or permits the deposit of solid waste on the right-of-way of any public highway, street, easement, or thoroughfare, upon any camping place or public grounds, or into any stream or dry watercourse;
- G. The improper storage of hazardous materials or the improper disposal of hazardous waste, including, but not limited to, materials used in, or waste products resulting from, the manufacturing of methamphetamine or other drugs;
- H. Attractive nuisances potentially dangerous to children or the general public that may involve risk or harm to their safety, including, but not limited to, abandoned ponds, pools, septic tanks, shafts, structures, wells, and/or other excavations;

- I. The presence of an excessive number of abandoned, dismantled, inoperative, unlicensed, and/or wrecked or damaged boats, campers, motor vehicles, trailers, and/or other mobile equipment or vehicles occupying a total area exceeding the size of a junkyard as defined by MCC Title 17;
- J. Any improvement or condition of property within, or adjacent to, a publicly accessible roadway which impedes the safe operation or integrity of the roadway;
- K. Land configuration, geology, or topography resulting from grading operations, excavation, fill or landscaping, which causes erosion, subsidence, sedimentation, or surface water drainage problems of a magnitude that is determined by the code official to be injurious or potentially injurious to the public health, safety, and welfare, or to any adjacent property or properties;
- L. The operation and maintenance of any premises in a manner that has resulted in repeated disruptive activities including, but not limited to, disturbances of the peace, public drunkenness, drinking in public, harassment of passersby, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, illegal parking, illegal camping including camping on, within or along a highway or roadway right-of-way or easement, loud noises, traffic violations, curfew violations, or law enforcement arrests;
- M. The maintenance of any premises which fails to comply with any condition imposed by any entitlement, permit, contract, or environmental document issued by or approved by the county in connection with the subject premises or improvements;
- N. The maintenance or use of any premises which is contrary to the provisions of MCC, including, but not limited to, Titles 3, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17 or 18;
- O. The maintenance or use of any premises which is contrary to the provisions of adopted Mariposa County policy, including policies adopted by resolution;
- P. The maintenance of any premises in a condition so as to be detrimental to the safety or general welfare of occupants, owners or the public, or in a manner so as to constitute a public nuisance as defined by Civil Code Section 3480;
- Q. Maintaining a junk yard, as defined by MCC Title 17;
- R. Barking dogs, as defined by MCC Chapter 6.16, except those which are essential to a properly functioning and established agricultural operation in compliance with Section 1.42.050 (Exceptions), below;
- S. Operation of a residential transient occupancy facility (a vacation rental [previously known as a transient rental] or a bed and breakfast as defined by MCC Title 17) without the required permit(s), certification(s), and/or Transient Occupancy Tax (TOT) Certificate and/or advertisement of a residential transient occupancy facility (a vacation rental [previously known as a transient rental] or a bed and breakfast as defined by MCC Title 17) which is not in compliance with the issued permit(s), certification(s), and/or Transient Occupancy Tax (TOT) Certificate;

- T. Use of a recreational vehicle (RV) as defined by applicable code(s) (including a park model or park trailer) for permanent residential occupancy or for vacation rental or bed and breakfast occupancy outside of an HCD-regulated Special Occupancy Park;
- U. Use of any of the following for permanent residential occupancy outside of an HCD-regulated Special Occupancy Park: a tent, a tent cabin, a yurt, a tree house, a tiny home or tiny house which isn't constructed through a state or county permit process, or any other similar structure or facility which is not intended for permanent human habitation and has not been authorized for human occupancy by either HCD or Mariposa County;
- V. Use of any of the following for residential transient occupancy or vacation rental occupancy outside of an HCD-regulated Special Occupancy Park: a tent, a tent cabin, a yurt, tree house, a tiny home or tiny house which isn't constructed through a state or county permit process, or any other similar structure or facility which is not intended for permanent human habitation and has not been authorized for human occupancy by either HCD or Mariposa County;
- W. Improvements or work conducted without required building or development permits, and/or use of, or occupancy of, a structure or structures which was/were constructed or improved without required building or development permits;
- X. Occupancy of or in any structure for which a building permit has been issued, but for which a certificate of occupancy has not been issued;
- Y. The presence of medical and/or recreational marijuana grows containing more than the maximum number of plants specified in applicable codes, including MCC Title 8 and/or MCC Title 17;
- Z. Failure to obtain any required county design review approval before construction or making improvements;
- AA. Any structure which was built without appropriate permits at the time of construction (if a permit was or would have been required at the time of construction);
- BB. Graffiti or any form of unauthorized painting, writing, or inscription regardless of content or nature of the material used in commission of the act;
- CC. Any other condition or use of property which constitutes a nuisance as defined by state law or by an ordinance of the county; and/or
- DD. Any condition that violates any provision of this code, applicable law, or any county permit or approval.

1.42.040 Nuisance - Declared

It is declared a nuisance for any person owning, leasing, occupying, or having charge of any premises in the county to maintain the premises in a manner that any one or more of the conditions or activities specified in Section 1.42.030 (Nuisance - Defined), above, are found to

exist. It is also declared a nuisance for any person to cause any one or more of the conditions or activities specified in Section 1.42.030 (Nuisance - Defined), above, to exist.

1.42.050 Exceptions

- A. Pursuant to all provisions in MCC Chapter 18.04, no properly functioning and established agricultural activity or operation shall be subject to this chapter.
- B. No temporary camping activity, as defined and allowed by MCC Title 17, in a zone that allows the temporary camping activity, shall be subject to this chapter.

1.42.060 Duty and Authority of Code Official

- A. The code official is designated and authorized to enforce this chapter. Whenever a nuisance as defined in Section 1.42.030 (Nuisance - Defined), above, exists anywhere within Mariposa County, the code official shall, after following the procedures specified in this chapter, exercise discretion in declaring the condition to be a nuisance.
- B. The code official may exercise those powers that may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter.
- C. Authority to access properties for inspection is established by MCC Section 1.40.180 (Access by Authorized Officers).
- D. The code official may appoint and delegate the duty to enforce this chapter to the officers, agents, and employees as the code official deems necessary, subject to the approval of the applicable department head.
- E. The code official shall have the authority to enter into a compliance agreement.

1.42.070 Duty to Abate

No person shall cause, permit, maintain, conduct, or otherwise allow a nuisance as defined in this chapter to exist in Mariposa County. It shall be the duty of every owner, occupant and person that controls any land or interest therein within this jurisdiction to remove, abate, and prevent the occurrence and/or reoccurrence of any nuisance upon such property or adjacent property or properties.

1.42.080 Administrative Procedure for Abating Nuisances

- A. **May Order Abatement of the Nuisance.** Whenever the code official determines that a nuisance exists, the code official may order the nuisance to be abated.
- B. **Issuance of a Notice and Order to Abate.** Should the code official determine that a condition has been created or maintained on private or public property which constitutes a nuisance as defined in Section 1.42.030 (Nuisance - Defined), above, the code official

shall issue a notice and order to abate. The contents of the notice and order to abate shall include all the following:

1. The street address (if any), assessor's parcel number (APN), and/or latest deed reference sufficient for identification of the subject property where the condition exists;
2. The identity of the responsible party;
3. A statement that the code official has found the condition or use of the subject property or act of any responsible party to be a nuisance with a brief and concise description of the condition or use of the subject property or act that constitutes a nuisance;
4. A description of the remedial action required to correct and/or abate the nuisance;
5. The date by which the nuisance must be corrected, which shall be no more than thirty (30) days;
6. Information regarding the ability of the responsible party to request an extension of the date for abatement of the nuisance;
7. A description of the consequences of failing to abate the nuisance; and
8. A statement indicating that the owner or other responsible party may, within fifteen (15) days after the date the notice and order to abate is served, submit a notice of appeal/request for hearing form to the code official issuing the notice and order to abate to appeal the notice and order to abate, or to show other cause why the condition(s) and/or use should not be abated in compliance with the provisions of this chapter.

C. **Service of the Notice and Order to Abate.** The code official shall cause the notice and order to abate to be served upon the owner of the subject property and, if applicable, upon the person(s) responsible for committing the act that constitutes a nuisance (collectively known as "responsible party"). The code official may also cause the notice and order to abate to be served upon the mortgagor(s), lessee(s), or holder(s) of an interest of record in the subject property. The notice and order to abate shall be served in any one or more of the three (3) following manners:

1. **Service by Mail with a Return Receipt Requested.** The notice and order to abate may be mailed by the code official to the responsible party by certified mail, with a return receipt requested, and by regular USPS first class mail. If the notice and order to abate sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the notice and order to abate sent by first class mail is not returned; and/or
2. **Service by Posting.** The code official may post the notice and order to abate on the subject property and/or any real property within the county in which the county

has reason to believe that the responsible party has a legal interest, and the posting shall be deemed effective service; and/or

3. Service by Personal Service

- i. The code official may attempt to locate and personally serve the responsible party and seek to obtain the signature of the responsible party on the notice and order to abate.
- ii. If the responsible party served refuses or fails to sign and does not acknowledge the notice and order to abate, the failure or refusal to sign shall not affect the validity of service of the notice and order to abate or of any subsequent proceedings.

4. For notices to correct violations of, or to abate nuisances under, the State Housing Law (Health and Safety Code Sections 17910 *et seq.*), including the Uniform Housing Code, a second notice and order to abate shall be served as required under Title 25, Section 60.

- D. **Proof of Service.** When service of the notice and order to abate is made by mail, posting or personal service, proof of service shall be certified to at the time of service by a written declaration. When service is made via certified mail, and the receipt is returned, it shall be affixed to a copy of the notice and order to abate retained by the code official. Failure of any person to receive a properly served notice and order to abate does not affect the validity of any proceedings taken under this chapter.

E. Extension of the Date for Abatement

- 1. The responsible party may request an extension of the date for abatement of the nuisance specified in the notice and order to abate. A request for an extension shall be in writing and include all the following:
 - a. An explanation of the circumstances necessitating an extension;
 - b. An explanation of the proposed corrective action(s) to be taken; and
 - c. A proposed alternative performance date.
- 2. The code official shall have discretion to grant an extension if he/she finds that:
 - a. Unique circumstances exist which require additional time to abate the nuisance; and
 - b. The responsible party has made a good faith effort, in the judgment of the code official, to comply with the order.
- 3. If the code official believes an extension of the date should be granted, he/she shall notify the responsible party of the new abatement date.

F. Recordation of Notice and Order to Abate

1. Once the code official has issued a notice and order to abate to a responsible party and the subject property remains in violation after the deadline established in the notice and order to abate, or any extension granted by the code official in compliance with Subsection 1.42.080.E (Administrative Procedures for Abating Nuisances/Extension of the Date for Abatement), above, the code official may record the notice and order to abate with the county assessor-recorder's office.
2. Any costs associated with recordation of the notice and order to abate and its removal may be assessed in the form of a nuisance abatement lien or special assessment against the subject property as specified in this chapter.

G. Violations

1. Any responsible party who fails to comply with a notice and order to abate within the time specified in the notice, or any extension of time granted in compliance with Subsection 1.42.080.E (Administrative Procedure for Abating Nuisances/Extension of the Date for Abatement), above, after having been properly served with a copy of the notice and order to abate, shall be guilty of a misdemeanor. The code official may, however, in his/her discretion, elect not to treat the violation as a misdemeanor, and seek enforcement in compliance with any other remedy provided in this chapter or authorized by law.
2. The imposition of a fee for any violation(s) of this section shall not excuse or permit the violation(s).
3. Failure to abate the nuisance within the time prescribed in the notice and order to abate, or any extension granted by the code official in compliance with Subsection 1.42.080.E (Administrative Procedure for Abating Nuisances/Extension of the Date for Abatement), below, shall be deemed a separate offense for each and every day that the nuisance is not abated.
4. Re-inspection Fee. When the responsible party does not abate any violation within the time specified in the notice and order to abate, or any extension granted by the code official in compliance with Subsection 1.42.080.E (Administrative Procedure for Abating Nuisances/Extension of the Date for Abatement), below, and the code official determines that the subject property must be re-inspected, the county may charge a re-inspection fee. The responsible party shall be given written notice that a re-inspection fee will be charged when a responsible party fails to correct a violation following the initial inspection and one compliance inspection.

H. Notice of Compliance

1. When the violation(s) listed on the notice and order to abate has/have been corrected, the responsible party may file with the code official a written request for a notice of compliance on a form provided by the county.

2. Once the code official receives this request, the code official shall re-inspect the subject property within twenty (20) days from receipt of the request to determine whether the violation(s) listed in the notice and order to abate has/have been corrected and whether any necessary permit(s) has/have been issued and any final inspection(s) have been performed.
 3. The code official shall provide a notice of compliance to the responsible party if the code official determines that:
 - a. Any violation(s) listed in the notice and order to abate have been corrected;
 - b. Any necessary permit(s) has/have been issued and finalized;
 - c. All fines and fees have been paid; and
 - d. The responsible party requesting the issuance of the notice of compliance has paid all costs of abatement.
 4. The code official shall cause the notice of compliance to be recorded with the county assessor-recorder's office if the notice and order to abate was recorded pursuant to Subsection 1.42.080.F (Administrative Procedure for Abating Nuisances/Recordation of Notice and Order to Abate), above. The recordation of the notice of compliance shall have the effect of canceling the recorded notice and order to abate.
- I. **Use of Summary Abatement Procedures.** In lieu of or in addition to the notice provisions and requirements specified in this section, the code official may use the summary abatement procedures specified in Section 1.42.180 (Summary Abatement), below, to abate unsafe conditions that pose an immediate or imminent threat to public health and safety as defined in that section.

1.42.090 Procedure to Appeal Notice and Order to Abate

- A. **Notice of Appeal.** The responsible party may appeal the notice and order to abate and the determination of the code official as specified in the notice and order to abate, by filing a notice of appeal/request for hearing form within fifteen (15) days from the date the notice and order to abate was served. Building code violations may not be appealed pursuant to this chapter. The notice of appeal/request for hearing form shall:
1. Be submitted in writing;
 2. Contain the name, physical and mailing address, email address, and telephone number of the appellant(s);
 3. Specify the ground(s) upon which the appeal is made;
 4. Be accompanied by the payment of an appeal fee in an amount established by resolution of the board of supervisors; and
 5. Be filed with the clerk of the board of supervisors.

B. **Determination of Completeness.** The county counsel shall have the responsibility of determining if the notice of appeal/request for hearing form was timely submitted and is complete for processing in the following manner:

1. If the notice of appeal/request for hearing form was not timely submitted, it shall be rejected.
2. If the notice of appeal/request for hearing form does not include sufficient itemization of the issues of the finding, decision or determination being appealed (grounds for appeal), the appeal will not be accepted as complete.
3. If the county counsel determines that the notice of appeal/request for hearing form is not complete, the appellant shall be so advised by certified mail, with a return receipt requested.
4. The appellant will have ten (10) days from the date that the county counsel's determination is made to provide the additional information which is needed for completeness.
5. If the additional information is not provided within ten (10) days, the appeal will not be accepted by the county for processing and the appeal rights of the appellant(s) will be forfeited.

C. **Hearing Officer**

1. The county administrative officer shall designate the hearing officer for the appeal hearing. In order to ensure independent judgment, the hearing officer shall not be a current Mariposa County employee.
2. The employment, performance evaluation, compensation, and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the decision of the hearing officer.
3. If a hearing officer is unavailable for any reason, the county administrative officer shall schedule the appeal hearing before the board of supervisors. Should the board of supervisors conduct the initial appeal hearing, all provisions contained in this chapter shall apply. The decision of the board shall be final.

D. **Appeal Hearing.** An appeal hearing shall be set for a date that is not less than twenty (20) days and not more than ninety (90) days from the date the notice of appeal/request for hearing form is accepted as complete for processing. The hearing officer shall notify the appellant of the date, time, and location of the hearing at least twenty (20) days before the hearing date, by mailing notice to the address listed on the notice of appeal/request for hearing form. The hearing date may be extended by mutual agreement of the county and the appellant(s).

- E. **Stay of Abatement.** A timely filed and complete appeal shall stay any further abatement proceedings until the appeal hearing is conducted and a final determination has been made.

1.42.100 Hearing Procedures

- A. **Fairness of Hearings.** Hearings required by this chapter shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.
- B. **Evidentiary Rules.** The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence upon which reasonable persons are accustomed to relying upon in the conduct of serious affairs.
- C. **Order of Proceeding at Hearing.** The hearing shall ordinarily proceed in the following order:
1. County staff's presentation shall proceed first. It should include identification of the file and subject property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the subject property was and is subject, an accounting of enforcement costs relating to the subject property, and a recommended decision.
 2. A presentation by or on behalf of the appellant(s) shall proceed next.
 3. Individuals owning property immediately contiguous to the subject property shall speak third.
 4. Other interested parties shall speak fourth.
 5. Staff shall be entitled to respond.
 6. The appellant(s) shall be entitled to rebuttal.
- D. **Speaker's Presentation**
1. Each speaker shall give his/her full name and address for the record.
 2. Each speaker's presentation shall be to the point and shall be as brief as possible. Visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the county. The hearing officer may establish a time limit for presentations; at least five (5) minutes shall be allowed for each speaker. Speakers with lengthy presentations are encouraged to submit the presentation in writing.
 3. Subject to the hearing officer's right to accept a motion to conclude the taking of all testimony or to close the hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall

be heard. Except for the response by staff and the rebuttal by appellant(s), each speaker shall speak only once.

4. Witnesses shall be sworn by the hearing officer.
- E. **Questioning of Witnesses.** During the hearing, the hearing officer may question any witness and may allow cross examination of any witness.
- F. **Submission of Additional Written Evidence and Argument.** At any time before the public input portion of the hearing is closed, any interested person may submit written evidence or argument. Except for the receipt of written argument, no ex parte communication, either direct or indirect, shall be received by the hearing officer during the period of a continuance or after the public input portion of the hearing has been closed.
- G. **Preservation of Records.** The hearing officer shall digitally record the hearing and shall preserve all photographs and other documentary evidence introduced at the time of the hearing.

1.42.110 Hearing Officer's Decision

- A. **Supporting evidence.** The hearing officer shall review the notice and order to abate to determine whether the notice and order to abate conforms to applicable law and is supported by a preponderance of the evidence.
- B. **Issuance of Decision**
 1. Within thirty (30) days after the hearing is closed, the hearing officer shall render his/her decision in writing relating to the existence or nonexistence of the alleged nuisance(s) and shall address all the following:
 - a. Whether the act(s) or condition(s) specified in the notice and order to abate exist;
 - b. Whether the act(s) or condition(s) constitute a nuisance; and
 - c. If a nuisance is determined to exist, whether it should be abated, how it should be abated, and by what date it should be abated.
 2. The decision shall contain findings of fact and conclusions of law.
 3. If a nuisance is determined to exist, the decision shall also include a statement of the costs of abatement incurred by the county in abating the violation, and shall also include a demand that costs of abatement incurred to date be paid to the county within twelve (12) days. The responsible party shall be liable for paying all the county's costs of abatement.
 4. If a nuisance is determined to exist, the decision shall include information regarding the further appeal rights of the appellant(s) pursuant to Section 1.42.120 (Appeal of Hearing Officer's Decision), below.

5. The decision of the hearing officer shall be final unless appealed.
 6. The hearing officer shall notify the clerk of the board of supervisors of the decision, the date upon which the decision became final, and the last date upon which an appeal to the board of supervisors may be made.
 7. If the board of supervisors does not receive an appeal within fifteen (15) days of the hearing officer's decision, it shall be deemed to have ratified and adopted the hearing officer's decision.
- C. **Mailing of Decision.** A copy of the hearing officer's decision shall be mailed by the code official to the owner of the parcel which is subject to the hearing and to the appellant(s), if different from the owner, by certified mail, with a return receipt requested and by regular USPS first class mail. If the decision sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the decision sent by first class mail is not returned.

1.42.120 Appeal of Hearing Officer's Decision

- A. **Appeal Within Fifteen (15) Days.** Within fifteen (15) days of the date of the hearing officer's decision, the responsible party, the owner or occupant of the subject property, the director of the department issuing the notice and order to abate, or any other interested person may appeal the decision of the hearing officer to the board of supervisors by delivering a written notice of appeal/request for hearing form containing the information listed in Subsection 1.42.090.A (Procedure to Appeal Notice and Order to Abate/Notice of Appeal), above.
- B. **Determination of Completeness.** The county counsel shall have the responsibility of determining if the notice of appeal/request for hearing form is timely submitted and complete in accordance with the requirements established in Subsection 1.42.090.B (Procedure to Appeal Notice and Order to Abate/Determination of Completeness), above.
- C. **Costs of Appeal and Record.** Following county counsel's determination of completeness, the clerk of the board of supervisors shall notify the appellant(s) of the costs of the appeal and record. Within fifteen (15) days of being notified by the clerk of the board of supervisors, the appellant(s) shall deposit with the clerk of the board of supervisors an amount of money equal to the estimated cost of transcribing the oral proceedings before the hearing officer and the cost of duplicating all required copies of the administrative record, including all exhibits introduced at the hearing. The appellant(s) shall be responsible for the cost of the appeal and record; provided, however, that:
1. If the board denies the appeal and upholds the hearing officer's decision, the costs of the appeal shall be paid by the appellant(s); or
 2. If the board upholds the appeal and reverses the hearing officer's decision, then the costs of the appeal shall be borne by the county.

D. Based on Administrative Record

1. In the event of an appeal to the board of supervisors, the board shall decide the appeal based solely on the administrative record prepared by the hearing officer.
2. The board shall review the record and then adopt, reject, or modify the decision of the hearing officer.
3. The board of supervisors' consideration of the appeal shall not require a hearing; however, board review and action shall occur at a regularly scheduled public meeting and public comment shall be allowed.

E. Decision of the Board

1. In the event of an appeal to the board of supervisors, the board shall decide the appeal within forty-five (45) days after receipt of the administrative record.
2. Notice of the board's decision shall be mailed to the appellant(s) and, if applicable, any other person receiving notice in compliance with Subsection 1.42.080.C (Administrative Procedure for Abating Nuisances/Service of the Notice and Order to Abate), above.

1.42.130 Abatement of Nuisance

- A. If a nuisance is determined to exist, the decision of the hearing officer and, if applicable, the board of supervisors shall order abatement of the nuisance within a time certain.
- B. The decision may be recorded by the code official.
- C. In the event of recordation of the decision and in the further event that the nuisance is abated, a notice of compliance shall be recorded. The code official is authorized to prepare and record a notice of compliance.
- D. Abatement of the nuisance shall not excuse the responsible party's liability for costs incurred during the administrative abatement process.
- E. The county may, in its discretion, commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures specified in this chapter.

1.42.140 Costs of Abatement

- A. If a final decision of the hearing officer or the board of supervisors finds that the act(s) or conditions(s) specified in the notice and order to abate exist(s), the responsible party shall be responsible for paying all of the county's costs of abatement. Costs of abatement shall become a nuisance abatement lien or special assessment against the subject property as is authorized by the Government Code and the following paragraph.
- B. The final decision shall also order that costs of abatement that have been incurred to date shall be assessed against the subject property as provided by Government Code Section

25845(b) and that an abatement special assessment will be recorded as is authorized by Government Code Section 25845(c). The notice of abatement special assessment shall be substantially in the form specified in Section 1.42.170 (Notice of Special Assessment), below. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the special assessment is a partial special assessment and that additional abatement costs will be incurred in the future. It is the intent of the board of supervisors that abatement costs incurred after the filing of the notice of abatement special assessment relate back to the date upon which the special assessment was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the enforcement officer shall cause a supplemental notice of abatement special assessment to be recorded. The supplemental notice shall contain all the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

1.42.150 Accounting of Costs of Abatement

- A. When the county causes the abatement of a nuisance in compliance with this chapter, the code official shall keep a detailed accounting of the total costs of abatement.
- B. When the abatement has been completed, the costs of abatement shall be charged and billed to the owner and/or other responsible party by the department that abated the nuisance.
- C. The bill shall be mailed by certified mail, with a return receipt requested, and by regular USPS first class mail. If the bill sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the bill sent by first class mail is not returned. Mailing shall be to the address of the owner of the subject property as shown on the last county equalized assessment roll and shall include all the following information:
 - 1. An itemized accounting with the total costs of abatement due and payable;
 - 2. Notice that the owner and/or responsible party may appeal the bill for purposes of contesting the accuracy and/or reasonableness of the costs of abatement within fifteen (15) days of the date the bill was mailed in compliance with Section 1.42.120.A (Appeal of Hearing Officer's Decision/Appeal Within Fifteen [15] Days), above; and
 - 3. Notice that if an appeal is not received by the department issuing the notice and order to abate within fifteen (15) days of the date the bill was mailed, the amount stated in the bill shall be deemed accurate and reasonable.

1.42.160 Recovery of Costs of Abatement

- A. Any and all costs of abatement incurred by the county may be recovered in compliance with this section. For purposes of this chapter, "costs of abatement" shall have the same meaning as established by MCC Section 1.40.040 (Definitions).

- B. The code official shall submit the itemized report to the board of supervisors showing the total costs of abatement.
- C. The clerk of the board of supervisors shall set the matter for hearing before the board of supervisors to determine the correctness and reasonableness of the costs of abatement within forty-five (45) days of receipt of the itemized report.
- D. Notice of the hearing shall be given in the same manner as specified in Section 1.42.090.D (Procedure to Appeal Notice and Order to Abate/Appeal Hearing), above.
- E. At the time and place fixed for receiving and considering the report, the board of supervisors shall hear and act upon the report of the costs of abatement, together with any objections or protests. The board may make any revision, correction, or modification to the report as it may deem just. The decision of the board on all protests and objections which may be made shall be final and conclusive.
- F. If the total costs of abatement, as determined by the board of supervisors, are not paid in full within thirty (30) days from the date of the decision, the amount stated in the bill shall be deemed accurate and reasonable, and the code official shall proceed to collect the amount stated in the bill.
- G. The board of supervisions may, by resolution, order that the total costs of abatement in compliance with this chapter be secured by a nuisance abatement lien or placed upon the county tax roll by the county tax collector's office as a special assessment against the subject property, or be placed on the unsecured roll, in compliance with Government Code Section 25845.
- H. Any person or responsible party who fails to remit payment of the total costs of abatement in compliance with the terms of this chapter shall, in addition to the amount of the costs of abatement, pay interest on the amounts due at the rate of ten (10) percent per annum, from the date on which the amount due first became delinquent until the date the final payment is received by the county.
- I. The county may collect any past due costs of abatement, interest, and its collections costs by use of all available legal means. The failure of any person or responsible party to pay any past due costs of abatement, interest or collections costs shall constitute a debt to the county.

1.42.170 Notice of Special Assessment or Nuisance Abatement Lien

- A. **Notice of Special Assessment.** The board of supervisors may determine that a notice of special assessment be recorded against the subject property in compliance with Government Code Section 25845.
 - 1. The notice of special assessment for recordation shall be in a form approved by the county counsel. The recording shall specify that the subject property may be sold after three years by the tax collector for the unpaid delinquent assessments.

2. Prior to recording, the county shall serve notice by certified mail of the special assessment on all persons or entities with a recorded interest in the subject property.
 3. Notice of the special assessment shall be provided to the tax collector for the county to add to the next regular tax bill levied against the subject property, and it shall be collected at the same time and in the same manner as ordinary taxes are collected, subject to the same penalties and procedures under foreclosure and sale in case of delinquency as provided for other taxes.
 4. After recordation, the special assessment may be foreclosed on as a lien in the manner and means provided by law.
- B. Notice of Nuisance Abatement Lien.** If the board of supervisors specially assesses the cost of the abatement against the subject property, the board also may cause a notice of abatement lien to be recorded.
- a. Prior to recording a nuisance abatement lien, the county shall serve notice of the lien on all persons or entities with a recorded interest in the subject property. In addition, the owners of record shall be served with notice of the lien at the address provided in the last equalized assessment roll or the supplemental roll for the subject property, whichever is more current, in the same manner as a summons in a civil action in accordance with Code of Civil Procedure, part 2, title 5, chapter 4, article 3 (commencing with Section 415.10). If the owner of record cannot be found after diligent search, notice of the lien may be served by posting a copy of the notice in a conspicuous place upon the subject property for a period of 10 days.
 - b. The notice shall, at a minimum, identify the record owner or possessor of the subject property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered by the board of supervisors and the date the abatement was complete, and include a description of the subject property subject to the lien and the amount of the abatement cost.
 - c. The lien created shall have the same priority as a judgment lien on real property.
 - d. In the event that the lien is discharged, released, or satisfied, then notice of the discharge, release, or satisfaction shall be recorded on the subject property.
 - e. If the lien is not satisfied within 90 calendar days, the county may foreclose on the lien.

1.42.180 Summary Abatement

- A. Conditions Constituting an Immediate Danger.** Whenever any condition on or use of property causes or constitutes an imminent or immediate danger to the health or safety of the public, the code official may elect to deliver a notice of unsafe condition to the responsible party, or to any person eighteen (18) years of age or older at the residence or

place of business of the responsible party. Delivery of the notice of unsafe condition shall be made by personal service, posting on the subject property, or any other effective means.

B. Notice of Unsafe Condition. The notice of unsafe condition issued by the code official shall contain all of the following:

1. The street address (if any), assessor's parcel number, and/or latest deed reference sufficient for identification of the subject property where the condition exists;
2. A description of the unsafe condition(s) on the subject property that constitutes a nuisance;
3. An order to abate the unsafe condition within a time period designated by the code official, not less than five (5) days after delivery of the notice; and
4. A statement that failure to abate the unsafe condition is a misdemeanor violation, subject to criminal prosecution, and will result in abatement by the county and that all costs incurred by the county to abate the unsafe condition shall be billed to the owner and/or responsible party and, if not paid upon demand by the county, shall become a nuisance abatement lien or special assessment on the subject property in compliance with Government Code Section 25845.

C. Enforcement

1. In the event any responsible party fails, refuses or neglects to abate the unsafe condition within the time specified, the code official may abate the unsafe condition and/or initiate other remedies authorized under this chapter or applicable code(s).
2. Abatement of an unsafe condition includes, but it not limited to, securing any structure or subject property from entry, removal and disposal of refuse on the subject property, removal of the nuisance from the subject property, any action(s) deemed necessary by the code official to protect the public's health or safety from the imminent or immediate danger, and/or assisting the responsible party to abate the unsafe condition.
3. If the code official reasonably determines that there is no responsible party to whom a notice of unsafe condition can be delivered, the code official may waive the five-day (5) notice and proceed immediately with abatement of the unsafe condition, provided that an affidavit is completed documenting the circumstances and reasons why the service of the notice would be futile.

D. Appeal. The responsible party may appeal the notice of unsafe condition by filing with the clerk of the board of supervisors a notice of appeal/request for hearing form containing the information listed in Subsection 1.42.090.A (Procedure to Appeal Notice and Order to Abate/Notice of Appeal), above, and containing reasons for seeking relief from the order before the compliance date designated in the notice of unsafe condition. The notice of appeal/request for hearing form shall be submitted within 5 days of the date of notice of

unsafe condition. The county administrative officer shall issue a decision on the merits of the appeal within two (2) business days and may sustain, modify, or overturn the notice of unsafe condition. The decision of the county administrative officer shall be final.

- E. **Summary Abatement.** After initially following the notice procedures specified in this section, the code official is authorized to continue abatement of the unsafe condition on the subject property without further notice.
- F. **Costs of Summary Abatement.** The owner and/or responsible party shall be responsible for all costs of abatement as defined in MCC Section 1.40.040 (Definitions), incurred by the county to abate the unsafe condition. The costs of abatement shall become a nuisance abatement lien or special assessment on the subject property in compliance with Government Code Section 25845 if the owner and/or responsible party fails to pay the costs upon demand by the county.
- G. **Immediate Abatement of Extreme Conditions.** The code official may immediately abate any unsafe condition without prior notice to the responsible party, if the code official finds and determines that there exists on the subject property an extremely hazardous or unsafe condition that cannot be permitted to exist for five (5) days. The code official shall provide a written report to the board of supervisors at the first available meeting after taking an action to immediately abate the unsafe condition explaining all actions taken and justifying the decision to proceed immediately without prior notice.

1.42.190 Legal Fees

In compliance with Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the county to abate a nuisance, or to collect the costs of abatement, the prevailing party shall recover its legal fees to the fullest extent permitted by law. The recovery of legal fees under this section is limited to those actions, administrative proceedings, or matters in which the county chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorney's fees. In no event shall an award of legal fees under this chapter exceed the reasonable amount of legal fees incurred by the county in the subject action or proceeding.

1.42.200 Monies Collected

The fees that are collected shall be deposited into the county's code compliance account. Recovered costs and other monies deposited into the county's code compliance account shall be used to fund cleanups, other compliance and abatement actions, and the costs of the code compliance program.

1.42.210 Access by Authorized Officers

See MCC Section 1.40.180 (Access by Authorized Officers).

1.42.220 Interference with Enforcement Procedures Prohibited

It shall be unlawful for any person to:

- A. Either orally or in writing, give information to a code official which the person knows or believes to be false;
- B. Remove or violate a notice or order posted as required by any provision of the Mariposa County Code for the purpose of interfering with or preventing the enforcement thereof; and/or
- C. Obstruct, impede, or interfere with the lawful activities of any officer, employee, contractor, or authorized representative of the county, or with any person who owns or holds any estate or interest in any parcel, whenever the officer, employee, contractor, or authorized representative of the county, or person having an interest or estate in the parcel, is engaged in the work of investigating or abating any violation, as authorized or directed by the provisions of this chapter, or in performing any necessary act preliminary to or incidental to any work authorized or directed in compliance with this chapter. The interference with enforcement procedures shall constitute a misdemeanor.

1.42.230 Remedies Cumulative

Nothing in this chapter shall prevent the appropriate authorities of Mariposa County from pursuing any civil, criminal or administrative remedy deemed necessary or appropriate to gain compliance with the applicable code(s). The provisions of this chapter are to be supplementary and complementary to all of the provisions of the Mariposa County Code, Mariposa County resolutions establishing policy (including but not limited to the resolution establishing rules of procedure to implement the California Land Conservation Act of 1965), state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to bar or limit the county from seeking any remedy to which it may otherwise be entitled.

1.42.240 Treble Damages

In compliance with Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner of property or responsible party is responsible for a condition that may be abated in compliance with an ordinance enacted in compliance with Government Code Section 25845, except for conditions abated in compliance with Health and Safety Code Section 17980, the court may order the owner or responsible party to pay triple the costs of the abatement.

1.42.250 General Provisions

- A. **Severability.** If any section, subsection, sentence, clause, phrase, or other part of this chapter is for any reason held to be unconstitutional or otherwise invalid, the decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections,

subsections, sentences, clauses, or phrases or other parts be declared unconstitutional or otherwise invalid.

- B. **Liability.** No employee of the county charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to any person or subject property as a result of any act or omission in the discharge of his/her duties.
- C. **Alternative Remedies.** Nothing in this chapter shall be interpreted to prevent prosecution under any other civil, penal, building, fire, or related codes or other titles of the Mariposa County Code. The county reserves the right to pursue any one or more remedies simultaneously or concurrently.
 - 1. **Criminal Prosecution.** If any responsible party fails to correct the violation(s) within the time specified in the notice and order to abate, the code official may:
 - a. Issue a citation as an infraction violation; or
 - b. Request the district attorney to prosecute the matter as a misdemeanor criminal offense.
 - 2. **Civil Litigation.** If any responsible party fails to correct the violation(s) within the time specified in the notice and order to abate, the county may apply to such court as may have jurisdiction to grant relief that will abate the nuisance, or restrain and enjoin any person from creating or maintaining a nuisance.
- D. **Denial of Permits, Licenses, or Other Entitlements.** Except as otherwise provided by law, the county shall not accept for processing, process, or issue or grant approval of any permit, license, or other entitlements for any subject property for which any notice of violation (as defined in MCC Section 1.40.040, Definitions) has been issued.
 - 1. The county shall withhold processing or accepting for processing any permit, license, or other entitlement for the subject property not necessary to correct violations until a notice of compliance has been issued by the code official.
 - 2. The county may not withhold any permit, license, or other entitlement which is necessary to correct or prevent serious public health and safety conditions.
 - 3. The county shall refuse to issue or grant a permit, license, or other entitlement pursuant to this section whether the applicant(s) was/were the owner(s) of the real property containing a violation of the applicable code(s) at the time of violation or whether the applicant(s) is/are either the current owner(s) or a vendee of the current owner(s) pursuant to a contract of sale of the real property with or without actual or constructive knowledge of the violation(s) at the time of the acquisition of their/its interest in the subject real property.
 - 4. The county shall provide written notice of its decision to withhold processing or accepting for processing, any permit, license, or other entitlements to the applicant(s) and shall describe the violation(s) and the action(s) necessary to abate

the violation(s). The written notice may be recorded in the Mariposa County Official Records.

Exhibit 3

(All text in these two sections is new text to County Code)

Sections 3.36.220 and 3.36.340 are added to Chapter 3.36 Transient Occupancy Tax of Title 3 Revenue and Finance as follows (all other existing sections to remain unchanged)

3.36.220 Access by Authorized Officers

Whenever it is necessary to make an inspection to enforce any provision of this chapter, or whenever the code official has reasonable cause to believe that there exists in any structure or upon any premises any condition in violation of this chapter, the code official may enter the premises at all reasonable times to perform any duty imposed upon the code official by this chapter, provided the code official receives free and voluntary consent from a responsible party. If entry is denied, except under exigent circumstances, an inspection warrant shall be secured.

3.36.230 General Provisions

A. Severability. If any section, subsection, sentence, clause, phrase, or other part of this chapter is for any reason held to be unconstitutional or otherwise invalid, the decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases or other parts be declared unconstitutional or otherwise invalid.

B. Liability. No employee of the county charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to any person or subject property as a result of any act or omission in the discharge of his/her duties.

C. Alternative Remedies. Nothing in this chapter shall be interpreted to prevent prosecution under any other civil, penal, building, fire, or related codes or other titles of the Mariposa County Code. The county reserves the right to pursue any one or more remedies simultaneously or concurrently.

D. Denial of Permits, Licenses, or Other Entitlements. Except as otherwise provided by law, the county shall not accept for processing, process, or issue or grant approval of any permit, license, or other entitlements for any subject property for which any notice of violation (as defined in MCC Section 1.40.040, Definitions) has been issued.

1. The county shall withhold processing or accepting for processing any permit, license, or other entitlements for the subject property not necessary to correct violations until a notice of compliance has been issued by the code official.

2. The county may not withhold any permit, license, or other entitlements which are necessary to correct or prevent serious public health and safety conditions.

3. The county shall refuse to issue or grant a permit, license, or other entitlements pursuant to this section whether the applicant(s) was/were the owner(s) of the real property containing a violation of the applicable code(s) at the time of violation or whether the applicant(s) is/are either the current owner(s) or a vendee of the current owner(s) pursuant to a contract of sale of the real property with or without actual or constructive knowledge of the violation(s) at the time of the acquisition of their/its interest in the subject real property.

Exhibit 4

(Additions in ***bold italic*** font; deletions in ~~double-strike-through~~ font)

Chapter 8.56 of Title 8 of the Mariposa County Code, for the “Medical Marijuana Cultivation” is amended as follows:

8.56 Medical Marijuana Cultivation

- ~~8.56.010 Findings.~~
- ~~8.56.020 Purpose and Intent.~~
- ~~8.56.030 Relationship to Other Laws.~~
- ~~8.56.040 Definitions.~~
- ~~8.56.050 Medical Marijuana Cultivation Prohibited.~~
- ~~8.56.060 Prohibited Medical Marijuana Cultivation Declared a Nuisance.~~
- ~~8.56.070 Penalties for Violation.~~
- ~~8.56.080 Abatement.~~
- ~~8.56.090 Investigation.~~ ***(Reserved)***
- ~~8.56.100 Keeping Promises Free From Creating a Public Nuisance.~~ ***(Reserved)***
- ~~8.56.110 Notice to Abate and Penalties for Unlawful Marijuana Cultivation.~~ ***(Reserved)***
- ~~8.56.120 Contents of Notice.~~ ***(Reserved)***
- ~~8.56.130 Service of Notice.~~ ***(Reserved)***
- ~~8.56.140 Administrative Appeal.~~ ***(Reserved)***
- ~~8.56.150 Liability for Costs.~~ ***(Reserved)***
- ~~8.56.160 Abatement by Owner or Occupant.~~ ***(Reserved)***
- ~~8.56.170 Enforcement.~~
- ~~8.56.180 Accounting.~~ ***(Reserved)***
- ~~8.56.190 Notice of Hearing on Accounting; Waiver by Payment.~~ ***(Reserved)***
- ~~8.56.200 Hearing on Accounting.~~ ***(Reserved)***
- ~~8.56.210 Modifications.~~ ***(Reserved)***
- ~~8.56.220 Special Assessment and Lien.~~ ***(Reserved)***
- ~~8.56.230 Enforcement by Civil Action.~~ ***(Reserved)***
- ~~8.56.240 Summary Abatement.~~ ***(Reserved)***
- ~~8.56.250 Administrative Penalty and Purposes.~~ ***(Reserved)***
- ~~8.56.260 Administrative Penalty.~~ ***(Reserved)***
- ~~8.56.270 Procedures.~~ ***(Reserved)***
- ~~8.56.280 Request for Appeal of Administrative Penalties.~~ ***(Reserved)***
- ~~8.56.290 Advance Deposit Hardship Waiver.~~ ***(Reserved)***
- ~~8.56.300 Right to Petition for Writ.~~ ***(Reserved)***
- ~~8.56.310 Board of Supervisors Hearing to Establish Civil Penalties.~~ ***(Reserved)***
- ~~8.56.320 Amount of Administrative Penalty.~~ ***(Reserved)***
- ~~8.56.330 Payment and Collection.~~ ***(Reserved)***
- ~~8.56.340 Administrative Hearing Fees.~~ ***(Reserved)***
- ~~8.56.350 Remedies Cumulative.~~ ***(Reserved)***

- ~~8.56.360 No Duty to Enforce. (Reserved)~~
~~8.56.370 Supplementation, Clarification or Modification of Procedural Rules for Hearings. (Reserved)~~
8.56.380 **Access by Authorized Officers**
8.56.390 **General Provisions**

8.56.010 Findings.

The Board of Supervisors of the County of Mariposa finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the “Compassionate Use Act of 1996”).

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. This Chapter is intended to be consistent with Proposition 215 and subsequent state statutes.

C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the “Medical Marijuana Program Act”) to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.

D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of Medical Marijuana Collectives.

E. As recognized by the California Attorney General’s August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as littering or crime against persons or property.

F. This ordinance is enacted, consistent with California Health and Safety Code section 11362.7 et seq., to protect the public health, safety, and welfare of County of Mariposa residents in relation to the legal operation and location of medical marijuana collectives and the cultivation of medical marijuana. The ordinance is enacted to establish reasonable regulations which balance the needs of medical patients and their caregivers with the rest of the public and promote the health, safety, and welfare of citizens, residents, visitors, and businesses of the County of Mariposa.

G. In *Brown v. County of Tehama* (2013) Cal.App.4th 704, the Court specifically held that “[n]either the Compassionate Use Act nor the Medical Marijuana Program grants...anyone... an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute.” In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme

Court concurred that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”

H. Medical marijuana grows have been operating in the County of Mariposa for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Other public entities have documented violence related to operation of medical marijuana collectives. Medical marijuana cultivations attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Marijuana cultivations have proliferated in the County of Mariposa resulting in numerous complaints by the public to the Sheriff and members of the Board of Supervisors of prevalent malodorous conditions and safety concerns.

I. The claim of many marijuana cultivations as being designed to assist authorized medical marijuana users, many cultivations have simply served as avenues for the exportation and distribution of marijuana for illegal use. Further, marijuana cultivations have been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the County of Mariposa and beyond. Unregulated medical marijuana cultivations are harmful to the welfare of the surrounding community and its residents and constitute a nuisance. All of these problems seem to worsen as the cultivations become larger. Marijuana grows have been found in Mariposa County to be of extraordinary size, measured in multiple acres or otherwise in quantity far in excess of what might be cultivated for medicinal use.

J. The federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about ½ pound, to 846 grams, or nearly two pounds. The “street value” of a single cannabis plant is substantial. Pound prices for domestically produced high grade cannabis sold illegally within Northern California can range from \$1,500 to \$3,000. A single marijuana plant can easily yield \$4,000 or more in salable marijuana. One pound can yield 908 doses.

K. Investigation of cultivations has revealed that some property owners claim not to know of large marijuana cultivations on their property or ignore cultivations, all to the prejudice of the people in the surrounding areas, and demonstrating the need for owner responsibility for activities on their properties.

L. Medical marijuana cultivation in the County of Mariposa poses an urgent and immediate threat to the public peace, health, and safety. Several medical marijuana cultivations, have recently emerged in the County of Mariposa which are very visible to the public, and easily accessible by the public, including children and youths. Some of these cultivations contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. During the current harvest, and each harvest and processing season, there is an immediate threat of violent crime due to the size, location, and monetary value of these mature medical marijuana cultivations.

M. According to the Mariposa County Sheriff, the U.S. Drug Enforcement

Administration, and as shown in other counties, marijuana growers may go from county to county, based on how vigorously each locale may regulate grows, fostering large criminal enterprises and prepared to accept low risk in favor of large economic reward, all to the disadvantage of the health and welfare of the local population.

N. According to the Mariposa County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, medical marijuana cultivations create a nuisance and threaten the safety and property of nearby land owners and their families. If medical marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.

O. Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.

P. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.

Q. The County of Mariposa has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing access to medical marijuana for ill residents.

R. The adverse effects from medical marijuana cultivations may increase as the crop continues to grow, thereby requiring quick action to protect the public.

S. Other counties in California have encountered similar problems from the unregulated medical marijuana grows and have attempted to regulate them by ordinances after their respective boards of supervisors found such action to be necessary. Investigations have revealed that some growers have come to this county because it does not have a regulation to deal with large grows. The Board of Supervisors accepts the Sheriff's recommendations that the ordinance hereby enacted can best accomplish the County of Mariposa's goals stated herein.

T. Nothing in this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the Act except as mandated by State law.

U. Nothing in this ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under State or Federal law.

8.56.020 Purpose and Intent.

~~It is the purpose and intent of this Chapter pursuant to California Government Code section 25123(d) to immediately prohibit and provide alternative enforcement and prevention mechanisms against the large-scale cultivation of medical marijuana in order to protect the environment and preserve the public peace, health, safety, and general welfare of the citizens, residents and travelers through the County of Mariposa.~~ ***It is the purpose and intent of this chapter to promote the health, safety, morals, and general welfare of the residents and businesses within the county by regulating the cultivation of medical marijuana as currently allowed under state law.***

8.56.030 Relationship to Other Laws.

This Chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the Board that this Chapter shall be interpreted to be compatible and consistent with federal, state, and county enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this Chapter will supersede any other provisions of this code found to be in conflict.

8.56.040 Definitions.

For purposes of this Chapter, these words and phrases shall be defined as follows, ***and as established by Mariposa County Code Section 1.40.040 (Definitions):***

- ~~A. "County" means the County of Mariposa.~~
- ~~B. "Marijuana" shall have the same definition as in California Health and Safety Code section 11018 as it now reads or as amended.~~
- A. "Medical Marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code sections 11362.7 et seq.
- B. "Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.
- C. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- D. "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- E. "Person responsible" is each person, association, corporation, partnership, or business entity of any type who assisted, contributed to, caused, performed, directed, established, maintained, aided or abetted, or operated any prohibited cultivation and each person, association, corporation, partnership, or business entity whatsoever owning a property interest in any property on which the prohibited medical marijuana is cultivated, and knew, or in the exercise of reasonable care, would have known of a medical marijuana cultivation prohibited by this Chapter.

F. "Nuisance" means a condition **described in Mariposa County Code Section 1.42.030 (Nuisance – Defined)**.

~~G. "Parcel" means a tract, parcel, plot or lot identified as an individual Assessor's Parcel Number ("APN") issued by the Mariposa County Assessor/Recorder.~~

~~H. "Days" as used herein mean calendar days, unless otherwise stated. "Business Days" means days that the County of Mariposa is open for regular business.~~

~~I. "Property," as used herein, shall include property, structures and the abutting half of the street, and/or alley, between the sidelines thereof as extended.~~

G. "Enforcing officer," as used in this Chapter, shall mean a sheriff, a district attorney, **code official** or any of their designees, each of whom may enforce this Chapter.

~~H. "Year," as used in this Chapter, shall mean three hundred and sixty-five (365) days.~~

8.56.050 Medical Marijuana Cultivation Prohibited.

A. The cultivation of more than twelve (12) marijuana plants, either indoors or outdoors, on any parcel is prohibited in all areas of the County; this limitation shall apply to parcels on which there is one (1) qualified patient or primary caregiver residing on the parcel. The cultivation of more than twenty-four (24) marijuana plants, either indoors or outdoors, on any parcel is prohibited in all areas of the County; this limitation shall apply to parcels on which there are two (2) or more qualified patients or primary caregivers residing on the parcel.

B. The outdoor cultivation of marijuana, in any amount or quantity, within one thousand (1,000) feet of any school, school evacuation site, church, park, child care center/day care facility, or youth-oriented facility is prohibited. The distance shall be measured in a straight line from the boundary line of the parcel upon which marijuana is cultivated to the boundary line of the parcel upon which the school, school evacuation site, church, park, child care center or youth-oriented facility is located. If the parcel on which the marijuana is being cultivated is twenty (20) acres or greater in size the distance shall be measured from the fenced area in which the marijuana is cultivated.

C. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby prohibited, unless all of the following conditions are satisfied:

1. If the person(s) cultivating marijuana on any parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain and provide a notarized letter upon request by an enforcing officer from the legal owner(s) consenting to the cultivation of marijuana on the parcel.

2. All marijuana grown outdoors shall be fully enclosed **on all sides** by an ~~opaque~~ **solid (wood or metal), secure** fence at least six (6) feet in height. The fence must provide adequate security to prevent unauthorized access. Landscaping, plastic sheeting, or cloth material (tarpaulins) shall not constitute an adequate fence for the purposes of this Subdivision. Fences greater than six (6) feet in height may require a building permit. Fences are subject to all other applicable development standards established by County Code.

3. Each outdoor area in which the marijuana is cultivated shall be set back at least 50 feet from the boundaries of the parcel upon which the cultivation is located. The enforcing officer or the Board of Supervisors may reduce this setback upon a finding of unusual hardship. Any building in which marijuana is cultivated must meet all Uniform Building Code and Zoning Code requirements.

4. The primary caregiver(s) or qualified patient(s) cultivating marijuana must reside on the property where cultivation occurs on a permanent basis.

8.56.060 Prohibited Medical Marijuana Cultivation Declared a Nuisance.

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this Chapter, within the County of Mariposa is declared to be unlawful and a nuisance and each person or responsible party is subject to abatement and administrative penalties under **County Code** ~~this Chapter~~.

8.56.070 Penalties for Violation.

A. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail, or a fine of one-thousand dollars (\$1,000). Violators shall be subject to any other enforcement remedies available to the County under any applicable local, state or federal statute or pursuant to any other lawful power the County may possess, **including Title 1 of Mariposa County Code**.

8.56.080 Abatement.

Any and all abatement procedures as set forth in Chapters 1.40 and 1.42 of Mariposa County Code ~~The procedures set out in this Chapter~~ may be used in addition to, or as an alternative to, any other abatement procedure and any other penalty or fine provided by law.

8.56.090 Investigation (Reserved).

Repealed.

~~The Enforcing Officer, upon receipt of information leading him/her to believe that a public nuisance of the type specified in this Chapter exists upon private property in the county, shall make a reasonable investigation of the facts and if possible inspect the property to determine whether or not a public nuisance exists. Inspections may include photographing the conditions or obtaining samples or other physical evidence. If an owner, occupant or agent refuses permission to enter or inspect, the enforcing officer may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure Sections 1822.50 through 1822.59.~~

8.56.100 Keeping Premises Free From Creating a Public Nuisance (Reserved).

Repealed

~~A. Every owner of property shall properly maintain their property in a manner such that it does not contain or become a public nuisance described by this Chapter and shall promptly abate any such public nuisance in accordance with this Chapter.~~

~~B. Violation of any provision of this Chapter shall subject the violator to criminal prosecution, abatement, administrative penalties, costs, and such other sanctions set forth in this Chapter and, without limitation, as otherwise provided by law.~~

8.56.110 Notice to Abate and Penalties for Unlawful Marijuana Cultivation (Reserved).

Repealed.

~~Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any property within Mariposa County, he or she is authorized to notify the owner(s) and occupant(s) of the property, through issuance of a "Notice to Abate and Penalties for Unlawful Marijuana Cultivation."~~

8.56.120 Contents of Notice (Reserved).

Repealed.

~~The notice set forth in 8.56.110 shall be in writing and shall:~~

~~A. Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor/recorder, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable;~~

~~B. Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property;~~

~~C. Identify such property by reference to the assessor's parcel number;~~

~~D. State that unlawful marijuana cultivation exists on the property and that it has been determined by the enforcing officer to be a public nuisance described in this Chapter;~~

~~E. Describe the unlawful marijuana cultivation that exists and the actions required to abate it;~~

~~F. State that the owner or occupant is required to abate the unlawful marijuana cultivation within seventy two (72) hours after the date that said notice was served;~~

~~G. State the date of service;~~

~~H. State that the owner or occupant may, within ten (10) calendar days after the date that said notice was served, make a request in writing to the clerk of the Board of Supervisors for a hearing before the Board of Supervisors to appeal the determination of the enforcing officer that the conditions existing constitute a public nuisance described by this Chapter, or to show other cause why those conditions should not be abated in accordance with the provisions of this Chapter;~~

~~I. State that, unless the owner or occupant abates the unlawful marijuana cultivation, or requests a hearing before the Board of Supervisors, within the time prescribed in the notice, the enforcing officer will abate the nuisance. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the county assessment roll~~

~~and become a lien on the real property, or be placed on the unsecured tax roll;~~

~~J. State that the notice may be sent to any person or entity identified in public records as claiming a property interest or lien on the property, including, but not limited to, financial institutions;~~

~~K. If sought by the notice, state the amount of the administrative penalty imposed by the enforcing officer pursuant to this Chapter, and that the amount may continue to accrue;~~

~~L. If sought by the notice, state how, where, to whom, and within what number of days the administrative penalty must be paid;~~

~~M. If sought by the notice, state that the administrative penalty will be effective if the violation is not corrected within ten (10) calendar days after service of the notice, and stating the effective date;~~

~~N. Generally state appellate or hearing rights, including that failure to appeal will mean the loss of all rights to challenge the notice in court;~~

~~O. Refer the recipient to this ordinance for further information; and,~~

~~P. Bear the signature of the enforcing officer issuing the notice along with the date of issuance.~~

8.56.130 ~~Service of Notice (Reserved).~~

Repealed.

~~A. The notice set forth in section 8.56.110 shall be served by delivering it personally to the owner and to the occupant, as well as each person sought to be held responsible, or by mailing it by regular United States mail, together with a proof of mailing, to the owner and occupant of the property at the address thereof, and to any non-occupying owner at his or her address as it appears on the last equalized assessment roll, except that:~~

~~1. If the records of the county assessor/recorder show that the ownership has changed since the last equalized assessment roll was completed, the notice shall also be mailed to the new owner at his or her address as it appears in said records; or~~

~~2. In the event that, after reasonable effort, the enforcing officer is unable to serve the notice as set above, service shall be accomplished by posting a copy of the notice on the real property upon which the nuisance exists as follows: Copies of the notice shall be posted along the frontage of the subject property and at such other locations on the property reasonably likely to provide notice to the owner. In no event shall fewer than two copies of the order be posted on a property pursuant to this section.~~

~~B. The date of service is deemed to be the date of personal delivery, or five (5) days after deposit in the mail or posting, as applicable.~~

8.56.140 Administrative Appeal (Reserved).*Repealed.*

~~A. Any person upon whom an notice to abate unlawful marijuana cultivation has been served may appeal the determination of the enforcing officer that the conditions set forth in the notice constitute a public nuisance described by this section and should be abated in accordance with the provisions of this Chapter to the Board of Supervisors. Any such administrative appeal shall be commenced by filing a written request for a hearing with the clerk of the Board of Supervisors within ten (10) calendar days after the date that said notice was served. If the tenth day falls on a non-business day, the time to request the hearing shall be extended to 5 pm the next business day. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the findings of the enforcing officer contained in the notice shall become final and conclusive on the eleventh (11th) calendar day following service of the notice.~~

~~B. In his or her discretion, the enforcing officer may, within ten (10) calendar days after the notice was served, request a hearing before the Board of Supervisors to determine whether or not the conditions should be abated in accordance with the provisions of this Chapter.~~

~~C. Upon timely receipt of a written request for hearing which complies with the requirements of this Section, the clerk of the Board of Supervisors shall set a hearing date not less than seven (7) business days nor more than thirty (30) business days from the date the request was filed. The clerk shall send written notice of the hearing date to the requesting party, to any other parties upon whom the notice was served, and to the enforcing officer. A failure to set a hearing date within this time period is not jurisdictional.~~

~~D. The Board of Supervisors shall consider the matter de novo, and may affirm, reverse, or modify the determinations contained in the notice to abate unlawful marijuana cultivation. The Board of Supervisors shall issue a written decision in the form of a resolution, which shall include general findings relating to the existence or nonexistence of the alleged unlawful marijuana cultivation, as well as findings concerning the propriety and means of abatement of the conditions set forth in the notice. Such decision shall be mailed to, or personally served upon, the party requesting the hearing, any other parties upon whom the notice was served, and the enforcing officer.~~

~~E. The decision of the Board of Supervisors, which shall be by resolution, shall be final and conclusive. A failure to appeal the enforcing officer's determination that a public nuisance exists will constitute a failure to exhaust administrative remedies by the responsible person(s), unless the enforcing officer proceeds in accordance with section 8.56.140 B.~~

8.56.150 Liability for Costs (Reserved).*Repealed.*

~~A. In any enforcement action brought pursuant to this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, each person who~~

~~causes, permits, suffers, or maintains the unlawful medical marijuana cultivation to exist shall be liable for all actual costs incurred by the county, including, but not limited to, actual administrative costs, and any and all actual costs incurred to undertake, or to cause or compel any responsible party to undertake, any abatement action in compliance with the requirements of this Chapter, whether those costs are incurred prior to, during, or following enactment of this Chapter;~~

~~B. In any action by the enforcing officer to abate unlawful medical marijuana cultivation under this Chapter, whether by administrative proceedings, judicial proceedings, or summary abatement, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the county elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.~~

8.56.160 Abatement by Owner or Occupant (Reserved).

Repealed.

~~Any owner or occupant may abate the unlawful medical marijuana cultivation or cause it to be abated at any time prior to commencement of abatement by, or at the direction of, the enforcing officer.~~

8.56.170 Enforcement.

~~A. Whenever the enforcing officer becomes aware that an owner or occupant has failed to abate any unlawful medical marijuana cultivation within ten (10) calendar days of the date of service of the notice to unlawful marijuana cultivation, unless timely appealed, or of the date of the decision of the Board of Supervisors requiring such abatement, the enforcing officer may take one or more of the following actions:~~

~~1. Enter upon the property and abate the nuisance by county personnel, or by private contractor under the direction of the enforcing officer. The enforcing officer may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of undertaking the work, if necessary; and/or,~~

~~2. Take the action referenced in section 8.56.140 B; and/or,~~

~~3. Request that the county counsel commence a civil action to redress, enjoin, and abate the public nuisance.~~

Any and all enforcement procedures as set forth in Chapter 1.40 and 1.42 of Mariposa County Code may be used in addition to, or as an alternative to, any other abatement procedure and any other penalty or fine provided by law, including by the prosecution of a civil action through the office of the county counsel, or through other counsel permitted by law, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

8.56.180 Accounting (Reserved).*Repealed.*

~~A. The enforcing officer shall keep an account of the cost for each abatement carried out and shall provide a report in writing, itemized by parcel, to the Clerk of the Board of Supervisors for the Board of Supervisors showing the cost of abatement and the actual administrative costs for each parcel to be considered by the Board of Supervisors.~~

~~B. Prior to providing the report to the Board of Supervisors as set forth in section 8.56.090 A, the enforcing officer, in his or her discretion, may provide a copy of the cost accounting to the person(s) sought to be held liable for payment. If paid, the enforcing officer need not forward the accounting to the Board of Supervisors. The enforcing officer need not wait for payment, but instead, may forward the accounting to the Board of Supervisors as set forth in section 8.56.180 A. Payment will constitute a waiver of all challenges to the costs so charged.~~

8.56.190 Notice of Hearing on Accounting; Waiver by Payment (Reserved).

~~Upon receipt of the account of the enforcing officer, the Clerk of the Board of Supervisors shall deposit a copy of the account pertaining to the property of each owner in the mail addressed to the owner and include therewith a notice informing the owner that, at a date and time not less than ten (10) business days nor more than twenty (20) business days after the date of mailing of the notice, the Board of Supervisors will meet to review the account and that the owner may appear at said time and be heard. The owner may waive the hearing on the accounting by paying the cost of abatement and the cost of administration to the enforcing officer prior to the time set for the hearing by the Board of Supervisors. Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said accounting is accurate and reasonable.~~

8.56.200 Hearing on Accounting (Reserved).*Repealed.*

~~A. At the time fixed, the Board of Supervisors shall meet to review the accounting of the enforcing officer. An owner of the affected property may appear at said time and be heard on the questions whether the accounting, so far as it pertains to the cost of abating a nuisance upon the land of the owner is accurate and the amounts reported reasonable. The cost of administration shall also be reviewed to ensure only the actual costs are charged.~~

~~B. The report of the enforcing officer shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate and reasonable.~~

8.56.210 Modifications (Reserved).*Repealed.*

~~The Board of Supervisors shall make such modifications in the accounting as it deems necessary and appropriate and thereafter shall confirm the report by resolution.~~

8.56.220 ~~Special Assessment and Lien (Reserved).~~

Repealed.

~~The Board of Supervisors may order that the cost of abating nuisances pursuant to this Chapter and the administrative costs as confirmed by the Board of Supervisors be placed upon the county tax roll by the county auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to California Government Code Section 25845, provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The Board of Supervisors may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to Section 25845 of the Government Code.~~

8.56.230 ~~Enforcement by Civil Action (Reserved).~~

Repealed.

~~As an alternative to the procedures set forth in Sections 8.56.110 through 8.56.220, the county may abate the violation of this Chapter by the prosecution of a civil action through the office of the county counsel, or through other counsel permitted by law, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.~~

8.56.240 ~~Summary Abatement (Reserved).~~

Repealed.

~~Notwithstanding any other provision of this Chapter, when any unlawful marijuana cultivation constitutes an immediate threat to public health or safety, and when the procedures set forth in Sections 8.56.110 through 8.56.140 would not result in abatement of that nuisance within a short enough time period to avoid that threat, the enforcing officer may direct any officer or employee of the county to summarily abate the nuisance. The enforcing officer shall make reasonable efforts to notify the persons identified in section 8.56.130, but the formal notice and hearing procedures set forth in this Chapter shall not apply. The county may nevertheless recover its costs for abating that nuisance in the manner set forth in Sections 8.56.180 through 8.56.220.~~

8.56.250 ~~Administrative Penalty and Purposes (Reserved).~~

Repealed.

~~Sections 8.56.250 through 8.56.330 provide administrative penalties for violation of this Chapter and is enacted pursuant to California Government Code Section 53069.4. The procedures of these sections serve the following purposes to effect the purposes and intents of this Chapter 8.56:~~

~~A. To provide a method to penalize responsible parties who fail or refuse to comply with this Chapter; and~~

~~B. To minimize the expense and delay where otherwise the County must pursue~~

~~responsible parties in the civil or criminal justice system.~~

~~C. The procedures regarding administrative penalties shall be in addition to criminal, civil or any other legal remedy established by law and available to address violations of this Chapter.~~

8.56.260 Administrative Penalty (Reserved).

Repealed.

~~A. Any responsible party violating any provision of this Chapter may be issued a notice of administrative penalties by an enforcing officer or the Board of Supervisors in accordance with the provisions of this Chapter.~~

~~B. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall result in penalties.~~

~~C. The enforcing officer may also request the Board of Supervisors, pursuant to Section 8.56.310, to impose an administrative penalty under this Chapter when, in the judgment of the enforcing officer, the amount of the administrative penalties prescribed in Section 8.56.320 are not adequate in light of the totality of the circumstances, including, but not limited to, the size of the cultivation, the value of the cultivation, the number of parcels being cultivated by the responsible persons, whether or not there have been specific adverse effects on the environment and whether or not the responsible persons are repeat violators.~~

~~D. The enforcing officer may issue a notice of penalties for a violation not committed in the officer's presence, if the officer has determined through investigation that the responsible party did commit or is otherwise responsible for the violation.~~

8.56.270 Procedures (Reserved)

Repealed.

~~A. Notice of administrative penalties shall be issued and served as set forth in Section 8.56.120 of this Chapter. The notice may be combined with the notice of abatement, or separately, in the discretion of the enforcing officer.~~

~~B. Failure of the enforcing officer to effect actual service on any responsible party as required in this section shall not invalidate any provisions of this Chapter, nor shall it relieve any responsible party from any duty or obligation required by the code.~~

~~C. Failure of any responsible party to receive such notice of administrative penalties shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by first class mail postage prepaid in the manner provided in this section shall be effective on the date of mailing.~~

8.56.280 Request for Appeal of Administrative Penalties (Reserved).*Repealed.*

~~A. A responsible person disputing the issuance of an administrative penalty may contest the administrative penalties by requesting a hearing, in writing, from the Clerk of the Board of Supervisors within ten (10) calendar days from the date of service of notice the enforcement officer seeks administrative penalties either in the Notice to Abate and Penalties for Unlawful Marijuana Cultivation, or otherwise. If the tenth (10th) day falls on a non-business day, the request must be filed by 5pm on the next business day. The person requesting a hearing must concurrent with the request advance deposit of the full amount of the penalty. Any administrative penalty that has been deposited shall be refunded if it is determined, after a hearing, that the person or entity charged with the violation was not responsible for the violation or that there was no violation as charged in the administrative penalty notice. The time requirement for filing a request for hearing form shall be deemed jurisdictional and may not be waived.~~

~~B. The appeal will be heard by the Board of Supervisors in accordance with the procedural rules set forth in Section 8.56.140 of this Chapter. The Board of Supervisors shall determine if the enforcing officer's decision conforms with this Chapter and is supported by a preponderance of the evidence presented by the enforcing officer or his or her department and whether or not the penalty is merited and consistent with the intent of this Chapter.~~

~~C. The appeal may be heard separately or concurrently with any hearing by the Board of Supervisors pursuant to Section 8.56.140 of this Chapter.~~

~~D. If appealed, the decision of the Board of Supervisors shall be final. Notice of the final decision shall be served by certified or registered mail on the affected persons. Payment will be due immediately.~~

8.56.290 Advance Deposit Hardship Waiver (Reserved).*Repealed.*

~~A. Any person who intends to request a hearing under Section 8.56.280 and is financially unable to make the advance deposit as required in that Section may file a request for an advance deposit hardship waiver.~~

~~B. The request shall be filed with the head of the department issuing the administrative penalty notice concurrent with the request for hearing.~~

~~C. The requirement of depositing the full amount of the administrative penalties as described in Section 8.56.280 shall be stayed unless and until the head of the enforcing department makes a determination not to issue the advance deposit hardship waiver.~~

~~D. The head of the enforcing department, or his or her delegate, may waive the requirement of an advance deposit and issue the waiver only if the person receiving the administrative penalty notice submits to the head of the enforcing department a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the head of the enforcing department, or his or her delegate, of the person's actual financial inability to~~

~~deposit with the county the full amount of the penalty in advance of the hearing.~~

~~E. If the head of the enforcing department determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the county within ten (10) calendar days of the date of the decision or thirty (30) calendar days from the date of issuance of the administrative penalty notice, whichever is later.~~

~~F. The head of the enforcing department, or his or her delegate, shall issue a written decision generally explaining the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written decision shall be final.~~

~~G. The written decision of the head of the enforcing department shall be mailed to the person who applied for the advance deposit hardship waiver at the address provided in the application.~~

8.56.300 ~~Right to Petition for Writ (Reserved).~~

Repealed.

~~A. Pursuant to Section 1094.6 of the California Code of Civil Procedure, or any other applicable code, any person who has been named in a Notice to Abate and Penalties for Unlawful Marijuana Cultivation or any other administrative penalty notice imposed under this Chapter, may, following exhaustion of administrative remedies, seek judicial review of the order(s) by filing a petition for writ of mandate pursuant to law and within the time periods provided by law. The filing of a petition for writ of mandate to review the order(s) shall not stay any action specified in the order.~~

8.56.310 ~~Board of Supervisors Hearing to Establish Civil Penalties (Reserved)~~

Repealed.

~~A. The enforcing officer may request a hearing before the Board of Supervisors to consider imposing a civil penalty in an amount or at a time different than provided for in Section 8.56.320. Notice of the hearing shall be sent by first class mail postage prepaid to the last known address of the persons to whom the penalty is to be imposed against.~~

~~B. The notice shall state the date, time and place of the hearing, which in no event shall be sooner than ten (10) calendar days and no later than twenty (20) calendar days from the date of service of such notice unless mutually agreed to by the property owner or responsible party and the enforcing officer, the specific violations, conditions, or uses which constitute the code violation on which the penalty is based.~~

~~C. The failure of any property owner or responsible party to receive any notice required to be given or posted pursuant to the provisions of this Chapter shall not affect in any manner the validity of any proceedings taken hereunder.~~

~~D. At the time fixed in the notice, the Board of Supervisors shall proceed to hear testimony from any interested person regarding the specified violation, condition or use deemed by the enforcing officer to be the basis for the proposed administrative penalty, and any other~~

~~matter which the Board of Supervisors may deem pertinent thereto.~~

~~E. Upon the conclusion of the hearing the Board of Supervisors will make a determination based on the evidence presented at the hearing, and may impose a civil penalty without regard to the limits in Section 8.56.320, which shall thereafter be collected pursuant to this Chapter.~~

~~F. The decision of the Board of Supervisors shall be final and the administrative penalty payable immediately.~~

8.56.320 Amount of Administrative Penalty (Reserved)

Repealed.

~~A. Administrative penalties for the violation of this Chapter shall be assessed as follows: a fine not exceeding two hundred fifty dollars (\$250.00) for the first violation; a fine not exceeding five hundred dollars (\$500.00) for the second violation of the same ordinance within one year from the date of the first violation; and a fine not exceeding one thousand dollars (\$1,000.00) for each additional violation of the same ordinance within one year from the date of the first violation.~~

~~B. Unless otherwise specified, the administrative penalty shall be due immediately.~~

~~C. Where the administrative penalty notice is issued for a continuing violation, unless the violation creates an immediate danger to health or safety, the responsible party shall be provided with an opportunity to correct the violation prior to the imposition of the administrative penalty in accordance with the following:~~

~~1. If a responsible party fails to correct any violation within thirty (30) calendar days after the administrative penalty notice is served under Section 8.56.270, the administrative penalty established by the administrative penalty notice shall become effective and due immediately.~~

~~2. The administrative penalty, or any portion thereof, for a first time violation which has become effective following the thirty (30) calendar day corrective period may be waived by the enforcing officer in his sole discretion only if the responsible party corrects the violation in accordance with all conditions established by the enforcing officer.~~

~~D. Neither imposition nor payment of an administrative penalty shall relieve the responsible party from his/her obligation to correct the violation, nor shall it bar further enforcement action by the enforcing officer.~~

8.56.330 Payment and Collection (Reserved).

Repealed.

~~A. In the event the responsible party fails to pay the administrative penalty when due, the county may take any actions permitted by law or ordinance to collect the unpaid penalty, which shall accrue interest at a rate of ten percent (10%) per month, commencing thirty (30) calendar days after the administrative penalty becomes due and continuing until paid.~~

~~B. In the event a civil action is commenced to collect the administrative penalty, the county shall be entitled to recover all costs associated with the enforcement, investigation, establishment and collection of the penalty. Costs include, but are not limited to, staff time and costs incurred in the enforcement, investigation, establishment and the collection or processing of the penalty and those costs set forth in California Code of Civil Procedures Sections 685.010 et seq. and 1033.5.~~

~~C. The amount of any unpaid administrative penalty, plus any other costs as provided in this Chapter, may be declared a lien on real property owned by the responsible party within the county as follows:~~

~~1. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be mailed first class mail postage prepaid to the last known address; and~~

~~2. When the enforcing officer records a lien listing delinquent unpaid administrative penalties with the county assessor/recorder's office, the lien shall specify the amount of the lien, the date of the code violations, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name of the owner of the parcel according to the last equalized assessment roll.~~

~~D. The amount of the unpaid administrative penalty, plus any other costs as provided by this Chapter, may be declared a special assessment against any real property owned by the responsible party and located within the county. The Board of Supervisors may impose the special assessment on one (1) or more parcels. The amount of the assessment shall not exceed the amount of administrative penalty imposed for the violation, plus any cost authorized by other Chapters of this code. The enforcing officer may present a resolution to the Board of Supervisors to declare a special assessment, and, upon passage and adoption thereof, shall cause a certified copy to be recorded with the Mariposa County Assessor/Recorder's Office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary property taxes.~~

~~E. The county may withhold issuance of licenses, discretionary and ministerial permits and other entitlement for any property whenever an administrative penalty resulting from a code violation on that property remains unpaid or the owner of the property has outstanding, unpaid administrative penalties for violations of the code.~~

~~F. The county may take any action permitted for enforcement of a civil money judgment pursuant to the Enforcement of Law, California Code of Civil Procedure Section 680.010 et. seq.~~

8.56.340 Administrative Hearing Fees (Reserved).

Repealed.

~~A. The Board of Supervisors may, by Resolution, establish fees for hearings conducted under Sections 8.56.140 and 8.56.310. The resolution shall contain provisions for waiving the fees if an economic hardship exists.~~

~~B. If the hearing fee is paid and the Board of Supervisors finds there is no nuisance as described in this Chapter, the hearing fee shall be refunded to the person who paid the fee, without interest.~~

8.56.350 Remedies Cumulative (Reserved).

Repealed.

~~All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.~~

8.56.360 No Duty to Enforce (Reserved).

Repealed.

~~Nothing in this Chapter shall be construed as imposing on the enforcing officer or the County of Mariposa any duty to issue an notice to abate unlawful marijuana cultivation, nor to abate any unlawful marijuana cultivation, nor to take any other action with regard to any unlawful marijuana cultivation, and neither the enforcing officer nor the County of Mariposa shall be held liable for failure to issue an order to abate any unlawful marijuana cultivation, nor for failure to abate any unlawful marijuana cultivation, nor for failure to take any other action with regard to any unlawful marijuana cultivation.~~

8.56.370 Supplementation, Clarification or Modification of Procedural Rules for Hearings (Reserved).

Repealed.

~~The Board of Supervisors may supplement, clarify or modify the procedural rules for any hearing herein, including but not limited to, the use of other hearing officers or boards, by resolution.~~

8.56.380 Access by Authorized Officers

Whenever it is necessary to make an inspection to enforce any provision of this chapter, or whenever the code official has reasonable cause to believe that there exists in any structure or upon any premises any condition in violation of this chapter, the code official may enter the premises at all reasonable times to perform any duty imposed upon the code official by this chapter, provided the code official receives free and voluntary consent from a responsible party. If entry is denied, except under exigent circumstances, an inspection warrant shall be secured.

8.56.390 General Provisions

A. Severability. If any section, subsection, sentence, clause, phrase, or other part of this chapter is for any reason held to be unconstitutional or otherwise invalid, the decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or

more sections, subsections, sentences, clauses, or phrases or other parts be declared unconstitutional or otherwise invalid.

B. Liability. No employee of the county charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to any person or subject property as a result of any act or omission in the discharge of his/her duties.

C. Alternative Remedies. Nothing in this chapter shall be interpreted to prevent prosecution under any other civil, penal, building, fire, or related codes or other titles of the Mariposa County Code. The county reserves the right to pursue any one or more remedies simultaneously or concurrently.

D. Denial of Permits, Licenses, or Other Entitlements. Except as otherwise provided by law, the county shall not accept for processing, process, or issue or grant approval of any permit, license, or other entitlements for any subject property for which any notice of violation (as defined in MCC Section 1.40.040, Definitions) has been issued.

1. The county shall withhold processing or accepting for processing any permit, license, or other entitlements for the subject property not necessary to correct violations until a notice of compliance has been issued by the code official.

2. The county may not withhold any permit, license, or other entitlements which are necessary to correct or prevent serious public health and safety conditions.

3. The county shall refuse to issue or grant a permit, license, or other entitlements pursuant to this section whether the applicant(s) was/were the owner(s) of the real property containing a violation of the applicable code(s) at the time of violation or whether the applicant(s) is/are either the current owner(s) or a vendee of the current owner(s) pursuant to a contract of sale of the real property with or without actual or constructive knowledge of the violation(s) at the time of the acquisition of their/its interest in the subject real property.

Exhibit 5

(All text in these two sections is new text to County Code)

Sections 17.144.110 and 17.144.120 are added to Chapter 17.144 Enforcement of Title 17 Zoning as follows (all other existing sections to remain unchanged)

Chapter 17.144 ENFORCEMENT

ADD TWO NEW SECTIONS (all other existing sections to remain unchanged)

...

17.144.110 Access by Authorized Officers

Whenever it is necessary to make an inspection to enforce any provision of this chapter, or whenever the code official has reasonable cause to believe that there exists in any structure or upon any premises any condition in violation of this chapter, the code official may enter the premises at all reasonable times to perform any duty imposed upon the code official by this chapter, provided the code official receives free and voluntary consent from a responsible party. If entry is denied, except under exigent circumstances, an inspection warrant shall be secured.

17.144.120 General Provisions

A. Severability. If any section, subsection, sentence, clause, phrase, or other part of this chapter is for any reason held to be unconstitutional or otherwise invalid, the decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases or other parts be declared unconstitutional or otherwise invalid.

B. Liability. No employee of the county charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to any person or subject property as a result of any act or omission in the discharge of his/her duties.

C. Alternative Remedies. Nothing in this chapter shall be interpreted to prevent prosecution under any other civil, penal, building, fire, or related codes or other titles of the Mariposa County Code. The county reserves the right to pursue any one or more remedies simultaneously or concurrently.

D. Denial of Permits, Licenses, or Other Entitlements. Except as otherwise provided by law, the county shall not accept for processing, process, or issue or grant approval of any permit, license, or other entitlements for any subject property for which any notice of violation (as defined in MCC Section 1.40.040, Definitions) has been issued.

1. The county shall withhold processing or accepting for processing any permit, license, or other entitlements for the subject property not necessary to correct violations until a notice of compliance has been issued by the code official.
2. The county may not withhold any permit, license, or other entitlements which are necessary to correct or prevent serious public health and safety conditions.
3. The county shall refuse to issue or grant a permit, license, or other entitlements pursuant to this section whether the applicant(s) was/were the owner(s) of the real property containing a violation of the applicable code(s) at the time of violation or whether the applicant(s) is/are either the current owner(s) or a vendee of the current owner(s) pursuant to a contract of sale of the real property with or without actual or constructive knowledge of the violation(s) at the time of the acquisition of their/its interest in the subject real property.

MARIPOSA COUNTY

NOTICE OF EXEMPTION

TO: County Clerk
P.O. Box 247
Mariposa, CA 95338

FROM:

Sarah Williams
County of Mariposa Planning Director
5100 Bullion St,
Mariposa, CA 95338

Project Title: County Code Amendment No. 2019-218 to establish Authority and Procedures for Administrative Citations and Abatement of Nuisances and to ensure consistency of text throughout code; Project implementation includes adoption of one (1) resolution and four (4) ordinances.

Project Location: Mariposa County, county-wide.

Description of Project: An ordinance establishing authority and procedures for administrative citations and abatement of nuisances. Chapters 1.40 and 1.42 will be added to Title 1 and will include provisions and procedures for an administrative citation program to assist in enforcing Mariposa County Code. Provisions and procedures for the abatement of nuisances will also be added to County Code. Additional sections are being added to Chapter 3.36 and 17.144 to ensure consistency between the new regulations and existing regulations. Amendments are being made to Chapter 8.56 to remove enforcement provisions and ensure consistency of text between the new regulations and existing regulations.

Name of Public Agency Approving Project: Mariposa County Board of Supervisors

Name of Person Carrying Out Project: Mariposa Planning Department

Exempt Status: General Rule Exemptions, Section 15060(c)(2) and Section 15061(b)(3), CEQA Guidelines; and Categorical Exemption Section 15308, CEQA Guidelines.

Reason Why Project Is Exempt: This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2), CEQA Guidelines (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15061(b)(3), CEQA Guidelines (there is no possibility the activity in question may have a significant effect on the environment). This project amends County Code to add procedures for administrative citations and abatement of nuisances and to ensure the code is internally consistent. The code amendments do not entail or result in any construction or land disturbing activities, and it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment; consequently, the project is not subject to environmental review.

In addition to the general exemptions listed above, the following categorical exemption applies: Categorical Exemptions Section 15308, CEQA Guidelines (actions taken as authorized by local ordinance to assure protection of the environment).

Lead Agency Contact Person:

Sarah Williams, Planning Director

Phone Number:

(209) 966-5151

Attachment: 4 201020 Draft NOE (11058 : County Code Amendment for Code Compliance Process - Resolution)

Ordinance-Administrative Penalties and Public Nuisance Abatement

Page 2 of 2

Sarah Williams
Planning Director

Date

Attachment: 4 201020 Draft NOE (11058 : County Code Amendment for Code Compliance Process - Resolution)

Mariposa County Draft Chapter 1.40

Summary Procedural Steps for Administrative Citation

1. Code official (CO) conducts research on alleged violation; CO conducts site inspection with consent of responsible party or following issuance of inspection warrant
- 2A. CO determines there is violation or violations of applicable code(s)
 - a. CO notifies responsible person(s) (RP) of violation
CO establishes requirements to correct violation (issues administrative citation or AC)
CO establishes (civil) fine and (administrative) fee
Service of AC can be by one (or more) of following:
 - i. Sent by certified mail with return receipt requested AND regular USPS first class mail
 - ii. Posted on property
 - iii. Personal service
 - b. CO gives RP maximum of 30 days to correct violation
CO to postpone imposition of fine and fee during this time (to encourage voluntary compliance by RP); no fine or fee charged if compliance completed timely
CO may extend timeframe for compliance if more time needed (see 2A.d.ii below)
 - c. CO notifies RP of appeal rights, which are within 15 days of AC
 - d. RP:
 - i. corrects violation and requests re-inspection within 30 days OR
 - ii. enters into compliance agreement (CA) to specify terms and extended schedule for correction of violation (more than 30 days)
 - e. CO to postpone imposition of fine and fee for duration of, and contingent on successful completion of the CA
 - i. if requirements of executed CA not followed by RP, the fine and fee may be backdated to date of AC
 - f. Certain violations not eligible for postponement of fine and fee (violations resulting in immediate health and safety risk, violations resulting in significant degradation of environment, violations which can be corrected for less than \$200, violation where RP fails to respond, violations commercial cultivation of marijuana)
 - g. CO conducts re-inspection to confirm compliance = PROCESS COMPLETE

OR

- 2B. CO determines there is violation of applicable code(s)
 - a. CO notifies responsible person(s) (RP) of violation
CO establishes requirements to correct violation (issues administrative citation or AC)
CO establishes (civil) fine and (administrative) fee
Service of AC can be by one (or more) of following:

10/2/2020; Administrative Citation

- i. Sent by certified mail with return receipt requested AND regular USPS first class mail
 - ii. Posted on property
 - iii. Personal service
 - b. CO gives RP maximum of 30 days to correct violation
CO to postpone imposition of fine and fee during this time (to encourage voluntary compliance by RP)
CO may extend timeframe for compliance if more time needed
 - c. CO notifies RP of appeal rights, which are within 15 days of AC
 - d. RP does not respond
 - e. CO conducts re-inspection or otherwise determines violation still exists
 - f. If fine and fee not paid within 30 days, then fine and fee doubles for late payment
 - g. If fine and fee not paid within 45 days, then CO can make fine and fee a nuisance abatement lien or special assessment against property, subject to collection by Tax Collector
 - h. Payment of fine and fee does not relieve RP from responsibility to correct violation and CO can continue to pursue enforcement action
3. Appeal Rights
- a. Notice of Appeal/Request for Hearing (NOA/RFH) must be filed within 15 days of AC (Building Code Violations may not be appealed pursuant to CCR Title 24)
 - b. NOA/RFH
 - i. must be accompanied by advance payment of fine and fee (refundable if appeal is upheld)
 - ii. may be accompanied by a request for an advance deposit hardship waiver (director of department may deny or grant request) and/or request for hardship waiver to reduce fees
 - 1. director of department issuing AC to decide on waiver request within 5 days
 - 2. if request is denied, payment of advance deposit shall be made within 10 days of date of waiver request denial decision
 - iii. must be accompanied by appeal fee established by Board of Supervisors
 - iv. County Counsel determines timely submittal of NOA/RFH
 - v. County Counsel determines adequacy of grounds for appeal
 - c. Appeal Hearing to be conducted between 20 and 90 days from the date the NOA/RFH accepted as complete; hearing date may be extended by mutual agreement of both parties
 - d. All information to be considered by hearing officer shall be sent to RP within 10 days of appeal hearing
 - e. Appeal hearing conducted based on established procedures
 - f. Hearing officer shall issue written decision within 30 days of close of hearing
 - g. Hearing officer's decision is final county action (no additional appeal rights to county)

10/2/2020; Administrative Citation

- h. Any person may seek review of the hearing officer's decision by Mariposa County Superior Court
- 4. Fines and (Administrative) Fees
 - a. Each and every day a violation of applicable codes exists constitutes a separate and distinct offense
 - b. Assessed following a time period of not more than 30 days to allow for correction of violation; may be stayed with CA

Mariposa County Draft Chapter 1.42**Summary Procedural Steps for Abatement of Nuisances**

1. Code official (CO) conducts research on alleged violation; CO conducts site inspection with consent of responsible party or following issuance of inspection warrant
- 2A. CO determines there is a nuisance
 - a. CO notifies responsible person(s) (RP) of nuisance
CO establishes requirements to abate nuisance (issues Notice and Order to Abate or NOTA)
 - b. Contents of NOTA defined by code
 - c. Service of NOTA to be one (or more) of following:
 - i. Sent by certified mail with return receipt requested AND regular USPS first class mail
 - ii. Posted on property
 - iii. Personal service
 - d. CO gives RP maximum of 30 days to abate nuisance
 - e. CO notifies RP of appeal rights, which are within 15 days of NOTA
 - f. RP may request extension of date for abatement
RP's request must be in writing and include specific information
 - i. CO has discretion to grant extension
 - ii. CO shall notify person(s) requesting extension of new abatement date
 - g. If RP corrects nuisance, RP may request a Notice of Compliance (NOC) on form provided by county
 - h. CO shall re-inspect property within 20 days of receipt of request for NOC
 - i. CO shall provide a NOC if re-inspection confirms that violations have been corrected, all necessary permits issued and finalized, and all fines paid
 - j. PROCESS COMPLETE

OR

- 2B .CO determines there is a nuisance
 - a. CO notifies responsible person(s) (RP) of nuisance
CO establishes requirements to abate nuisance (issues Notice and Order to Abate or NOTA)
 - b. Contents of NOTA defined by code
 - c. Service of NOTA to be one (or more) of following:
 - i. Sent by certified mail with return receipt requested AND regular USPS first class mail
 - ii. Posted on property
 - iii. Personal service

9/30/2020; Summary Abatement

- d. CO gives RP maximum of 30 days to abate nuisance
 - e. CO notifies RP of appeal rights, which are within 15 days of NOTA
 - f. RP may request extension of date for abatement
RP's request must be in writing and include specific information
 - i. CO has discretion to grant extension
 - ii. CO shall notify person(s) requesting extension of new abatement date
 - e. If nuisance still exists after deadline, CO may record NOTA at Assessor-Recorder's Office; recording costs may be assessed to property as special assessment
 - f. RP shall be guilty of a misdemeanor (CO has discretion to treat violation as misdemeanor or not)
 - g. CO may charge for re-inspection, after giving notice to RP (initial inspection and one compliance inspection provided at no charge to RP)
 - h. If RP corrects nuisance, RP may request a Notice of Compliance (NOC) on form provided by county
 - i. CO shall re-inspect property within 20 days of receipt of request
 - j. CO shall provide a NOC if re-inspection confirms that violations have been corrected, all necessary permits issued and finalized, and all fines paid
 - k. CO shall cause the NOC to be recorded, to cancel the NOTA
 - l. RP pays administrative fee for administrative costs
 - m. PROCESS COMPLETE
3. Appeal Rights
- a. Notice of Appeal/Request for Hearing (NOA/RFH) must be filed within 15 days of NOTA (Building Code Violations may not be appealed pursuant to CCR Title 24)
 - b. NOA/RFH
 - i. must be accompanied by appeal fee established by Board of Supervisors
 - ii. County Counsel determines timely submittal of NOA/RFH
 - iii. County Counsel determines adequacy of grounds for appeal
 - c. County Administrative Officer designates Hearing Officer (who shall not be a current Mariposa County employee); if Hearing Officer not available, hearing shall be scheduled before Board of Supervisors
 - d. Appeal Hearing to be conducted by Hearing Officer between 20 and 90 days from the date the NOA/RFH accepted as complete; hearing procedures established; hearing date may be extended by mutual agreement of both parties
 - e. Appeal shall stay (stop) further abatement proceedings
 - f. Hearing officer shall issue written decision within 30 days of close of hearing
 - g. Administrative costs associated with County's abatement process shall be paid within 12 days.
 - h. Appellant may submit appeal of Hearing Officer's decision to Board of Supervisors within 15 days of Hearing Officer's decision by filing NOA/RFH
 - i. County Counsel reviews NOA/RFH for timely submittal and completeness

9/30/2020; Summary Abatement

- j. Clerk of Board notifies appellant of costs of appeal and preparing record (transcribing oral proceedings before hearing officer and duplicating administrative record)
 - k. Appellant deposits costs within 15 days of notification of costs
 - i. If appeal denied, appellant pays all costs
 - ii. If appeal upheld, county pays all costs
 - l. Appeal Hearing conducted by Board of Supervisors (procedures established)
 - i. Does not require hearing
 - ii. Board to consider administrative record prepared by hearing officer (only)
 - iii. Decision within 45 days of receipt of administrative record
 - iv. If violation is found,
 - 1. Board shall order abatement costs be recorded as nuisance abatement lien or special assessment against property
 - 2. Board shall order abatement of violation within time certain
 - 3. Board's order may be recorded
 - m. Nuisance Abatement Lien or Abatement Special Assessment shall also be recorded; will provide notice of additional abatement costs in future
 - n. RP may complete abatement, and request Notice of Compliance
 - o. Alternatively (if RP does not complete abatement), County may cause abatement of the nuisance and keep accounting of abatement costs
 - p. Upon completion of abatement, costs shall be charged and billed to owner(s); bill shall be sent
 - q. Bill may be appealed within 15 days
 - r. Abatement costs submitted to Board of Supervisors to determine correctness and reasonableness of costs
 - s. Notice of hearing shall be provided at least 20 days before hearing date
 - t. Board conducts hearing and confirms or modifies report of abatement costs
 - u. Board may adopt resolution ordering that abatement costs be placed on tax roll as nuisance abatement lien or special assessment or be placed on the unsecured roll
4. Violation
- a. Each and every day a violation of applicable codes exists constitutes a separate and distinct offense
 - b. If abatement costs not paid, interest at rate of 10 percent per annum shall be charged
5. Summary Abatement Process
- a. If imminent or immediate danger exists, CO may issue Notice of Unsafe Condition (NUC)
 - b. Unsafe condition is misdemeanor violation
 - c. Unsafe condition must be abated within 5 days
 - d. CO may abate the unsafe condition if RP fails to abate
 - e. CO may waive 5 day notice and proceed immediately to abate the unsafe condition
 - f. RP may appeal NUC within 5 days of NUC
 - g. County Administrative Officer shall decide appeal within 2 days; decision shall be final

9/30/2020; Summary Abatement

- h. Abatement costs to become special assessment on property if RP fails to pay costs upon demand
 - i. CO may immediately abate unsafe condition without notice to RP if there is extremely hazardous or unsafe condition; CO to provide report to Board of Supervisors at first available meeting after action
- 6. Legal Fees
 - a. Prevailing party shall recover its legal fees
- 7. Any monies collected are deposited into code compliance account; upon second or subsequent civil or criminal judgment within 2 year period, court may order 3X cost of abatement
- 8. Other remedies
 - a. Criminal prosecution
 - b. Civil litigation
 - c. No permits shall be accepted or processed or approved until Notice of Compliance has been issued



MARIPOSA COUNTY

Board of Supervisors



Agenda Item – No Resolution Requested

MEETING: September 18, 2023
TO: The Board of Supervisors
FROM: Steve Engfer, Planning Director
RE: Receive an Informational presentation and discussion regarding CCAC Memorandum No. 3 Findings and Recommendations Phase I Document

RECOMMENDATION AND JUSTIFICATION

Receive an Informational presentation and discussion regarding CCAC Memorandum No. 3 Findings and Recommendations Phase I Document.

BACKGROUND AND HISTORY OF BOARD ACTIONS

Board Resolution No. 2021-331 June 8, 2021 Establishing the Code Compliance Advisory Committee.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

None

FINANCIAL IMPACT

None

ATTACHMENTS

1. CCAC Findings and Recommendations Phase 1 Document

July 19, 2023

TO: Mariposa County Board of Supervisors

FR: Code Compliance Advisory Committee (CCAC)

RE: CCAC Findings and Recommendations for an Effective and Innovative Mariposa County Code Compliance Program

BACKGROUND

On April 18, 2023, the Code Compliance Advisory Committee (CCAC) made its first presentation before the Board of Supervisors, which included an update of the CCAC's activities and a 2023 Annual Report. Within that presentation, the CCAC's work methodology, initial findings, recommendations, priorities, and work plan were outlined and discussed. At the end of the presentation, the CCAC asked for the Board of Supervisors' input and feedback regarding the CCAC's current direction and focus.

This memorandum builds upon that April 18, 2023 presentation¹ and the subsequent feedback received, and examines the CCAC's findings and recommendations in greater detail for a future conversation with the Board of Supervisors, now scheduled for August 8, 2023, at 2:00 p.m.

One of the suggestions that the CCAC received from the Board of Supervisors on April 18, 2023 was to review the proposed Draft Resolution 2019-218², and determine if there was any benefit to incorporate 2019-218 into the development of future Mariposa County code compliance Codes and Ordinances.

The CCAC subsequently researched and reviewed several aspects of the proposed Draft Resolution 2019-218. The CCAC found the proposed Draft Resolution 2019-218 to be overly harsh, and didn't recognize - or acknowledge - the County's historical contributions to the existing problems surrounding code compliance.

The consensus of the CCAC is that the proposed Draft Resolution 2019-218 is a deeply flawed code compliance approach for multiple reasons, and should not be considered further by the County. That said, 2019-218 is simply not the right code compliance approach for the Mariposa County community.

Over the past 1-1/2 years, the CCAC has identified multiple factual reasons as to why the current Mariposa County code compliance program has been judged ineffectual. Although the CCAC can delve into those reasons in great detail, the CCAC instead proposes to move forward with a conversation that is focused more upon solutions.

The CCAC's research has determined that a better approach for an effective and innovative code compliance program is that while enforcement is a key component of code compliance, identifying positive actions that will eliminate existing violations - and the potential for future violations - is an equally key component of developing an effective code compliance program.

¹ April 18, 2023, at 2:00 p.m. Board of Supervisors' Agenda Packet and Minutes

² October 20, 2020, at 2:00 p.m. and November 10, 2020, at 2:00 p.m. Board of Supervisors' Agenda Packet and Minutes

As a result, the CCAC's recommendation to the Board of Supervisors is to permanently reject the proposed Draft Resolution 2019-218.

The CCAC instead recommends that the Board of Supervisors support a progressive, multi-faceted code compliance approach that includes:

- (a) update existing - and unused - abatement and fines codes or ordinances that the County currently has on the books;
- (b) craft new codes and ordinances that will support a balanced code compliance framework;
- (c) create an amnesty program that provides options and incentives for Mariposa County residents and property owners to cooperatively become code compliant; and, perhaps most importantly,
- (d) engage and encourage greater public input and community participation as both stakeholders and customers.

This is a balanced approach of developing incentives and cooperative communication approaches that encourages code compliance, and only initiating consequences of fines or abatement if individuals demonstrate a clear disregard towards becoming code compliant. The ultimate goal of the Mariposa County's code compliance program should be to gain compliance at the lowest possible level.

This balanced approach supports the unique character of Mariposa County.

The following CCAC findings and recommendations provide a roadmap towards an effective and innovative code compliance program for the County of Mariposa. They are categorized under the three major themes listed below:

- A. Communication, Education, Customer Interaction, and Public Engagement
- B. Internal and Structural Organization
- C. Effective and Innovative Code Compliance Program

FINDINGS AND RECOMMENDATIONS

A. COMMUNICATION, EDUCATION, CUSTOMER INTERACTION, AND PUBLIC ENGAGEMENT

FINDINGS		RESPONSES
F1	There is currently inadequate education of and communication between Mariposa County, property owners, and residents as it relates to code compliance and enforcement activities.	
F2	The County's official website is not well-utilized for code compliance and enforcement activities.	
F3	Written brochures, flyers, and other publications about remedial programs, grants, and other mitigation resources are virtually nonexistent. The public deserves to have much better information easily available.	

F4	No public information source is readily available to keep the code compliance complainants and the general public updated as to the status of the initial complaint or request for investigation.	
	RECOMMENDATIONS	RESPONSES
R1	Public engagement related to general code compliance processes, remediation, and mitigation options should be encouraged and facilitated by the County through public town hall meetings, workshops, and other public gatherings. Public engagement should be an ongoing process that will continually provide public feedback to the County, limit rumors and misinformation, and encourage a fully informed public. Public engagement should begin at the start of any process. It is not sufficient to ask for public input when the County's draft proposals have already been developed.	
R2	Public education and communication should include weekend and after-hour meetings or activities to allow for a wider diversity of County participation and input. The rural geography of the County cannot be changed; the approach can.	
R3	An ongoing public communication and education approach that supports a partnership with the public should be developed and consistently used. The communication and education plan should utilize different methods of public interaction, including reaching out to various groups that are specifically impacted by code compliance rules or processes - for example, contractors and real estate agents - as well as utilizing local and social media, and the County's official website. The purpose of a partnership approach is not for the County to simply inform, but to encourage a two-way educational dialogue to learn and adapt to different perspectives.	

R4	The County's Public Information Officer (PIO) should be actively utilized to effectively communicate and help de-mystify the code compliance process, as well as to highlight future scheduled community activities that support code compliance. An example of this type of informational outreach could be the PIO creating a "Mariposa Minute" v-log or YouTube content where the PIO spends one minute discussing code compliance updates and/or upcoming community events that support code compliance. These "Mariposa Minutes" could be routinely scheduled, and prominently showcased on the Mariposa County official website.	
R5	Current code compliance ordinances, rules, grants, programs, remediation and mitigation options, regulations, and processes should be located on the County's website and posted in appropriate County departments for easy public access. Currently, it is very difficult for County residents or property owners to find information for basic building, planning, and zoning questions. The rural nature of Mariposa County makes it inconvenient to drive to the Development Services counter for a simple fee schedule or to obtain an answer to a routine question. County residents and property owners should be able to research a particular building, planning, or zoning question online, and only come to the counter for follow-up or more technical answers, as necessary. Typical Q&A explanatory documentation and assistance, including costs, steps, and options to remediate current - and future - code violations should be easily obtained and understood - both online and in written documentation formats.	

R6	Use high school or college interns or public volunteers to help develop informational booklets and brochures to thoroughly describe Mariposa County's Codes and Ordinances, and illustrate the difference between Health and Safety violations and blight. It is also important for the public to know what issues do not fall under the purview of the County's code compliance and enforcement program. For example, the difference between a private vs. public complaint, which can include privacy concerns, view protection, tree removal, and fence disputes, and would be privately addressed through the court system, mediation, or arbitration.	
R7	Clearly differentiate between the County departments that are primarily responsible for the oversight of various code compliance and enforcement, and will be taking the lead in a particular type of compliance or enforcement action. Although there is - and should be - overlapping coordination between County departments, there are established spheres of responsibility, depending whether the violation is a civil or a criminal violation, or if a particular department has the ultimate responsibility to enforce a specific type of violation. For example, the Sheriff's Office has the responsibility to enforce laws related to dogs attacking people or pets, while the Environmental Health Department has the responsibility to ensure that sewage is not being dumped into our rivers and streams. An organizational chart or a flow chart on the County's website should be provided for the public to easily determine what department is responsible for what code compliance enforcement activities. In addition to clearly delineating what department is responsible for what types of code enforcement activities, the contact information for each department should be clearly identified, both for accountability and to receive questions from the public.	

R8	As a result of not having a way to publicly track code compliance complaints, the public is often left in the dark about what the status is of their complaint, or if their complaint has even been registered, or feel like they have to do their own investigation to obtain resolution. The CCAC has listened to County residents express their frustration about the lack of progress and the perceived lack of interest shown by the County about an ongoing complaint. Although enforcement activities can take time to resolve, the public should be able to quickly ascertain the current status of a code compliance complaint and the expected timeframe for solutions and eventual resolution. A County online request for investigation (RFI) and code compliance and enforcement status tracking system should be implemented so that the public can view the status of code compliance and code enforcement complaints. The code compliance and enforcement information provided online to the public would be only that information that is considered to be in public interest and legally appropriate.	
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B. INTERNAL AND STRUCTURAL ORGANIZATION

	FINDINGS	RESPONSES
F5	Internal code compliance processes and procedures are currently imprecise and redundant, leading to inconsistent enforcement efforts and an appearance of arbitrariness.	
F6	Code compliance notices, letters, and other correspondence give confusing instructions and guidance, and often contain hostile and arbitrary language or tone, resulting in further alienation of the public.	
F7	An organizational study and/or a classification study should be performed to determine the best structure and appropriate classifications that are assigned to the Planning, Zoning, and Building code compliance function.	

RECOMMENDATIONS		RESPONSES
R9	Fully documented internal code compliance and enforcement policies and procedures should be developed that focus on customer service, transparency, and accountability. These internal and fully documented policies and procedures should be easily accessible and consistently applied for both internal and public reference. The following topics should be included: (a) how code violations are identified; (b) how code violations are prioritized related to health and safety; (c) how code violations are tracked; (d) the timeframe expectation for resolution; (e) what County department is responsible as the lead department to resolve the violation; (f) the next steps in the resolution, communication, and problem solving process with County property owners and the County; (g) what correspondence should be sent to County property owners; (h) the order in which those notices and forms are to be sent out to County property owners; and, (i) what the steps are in the code compliance and enforcement process.	

R10	The code compliance and enforcement function should incorporate a regularly-scheduled, bi-weekly (or monthly) roundtable with other County department heads, or their designee, to discuss new and ongoing violations. The first purpose is to create a collaborative dialogue among County staff to assist and resolve critical, high priority code violation properties in Mariposa County at the earliest stages. The County departments represented should include: Building, Planning, Environmental Health, Fire, Public Works, District Attorney, County Counsel, and the Sheriff's Office. The latest violations and their status would be presented, and the departments would discuss each property and determine their critical priority level, and designate a lead department for compliance. The Code Compliance Technicians will work with the lead department to assist with postings, notices, and document contacts with property owners and tenants. The lead department, and any other department with compliance issues, will provide all County Codes and Ordinance sections and interpretations to the Code Compliance Technicians, along with a timeline for compliance. The Code Compliance Technicians shall calendar scheduled timelines for follow up and next steps. The second purpose is to create a cooperative dialogue between County staff and those Mariposa County residents with a higher level of critical property code violations. When all of a property's violations and timelines have been discussed internally at the County department roundtable, the property owner should have the opportunity to publicly meet with the roundtable and discuss the issues and possible solutions towards resolution.	
R11	Identify the top health and safety code violations for Mariposa County and rank those code violations for top-priority enforcement. This ongoing assessment should be made by the Mariposa department roundtable discussed above.	

R12	Continue the review and assessment of the County's current Code Compliance Open Case Log. Not all code compliance violations need to automatically be placed on the County's Code Compliance Open Case Log. There are many low-level code violations that can be remedied quickly with a simple conversation between County staff and the Mariposa County resident or property owner. For example, identify ways that the County can facilitate the final building sign-off process instead of properties languishing on the County Code Compliance Open Case Log.	
R13	A complete review of the County's code compliance and enforcement notices, letters, timelines, and overall communication with the public is necessary. Specifically, the CCAC has found a lack of structure and guidance for code compliance staff. As a result, notices were inconsistently applied, non-specific, or misleading in their purpose and intent. Additionally, the CCAC found periods of time when building notices were incorrectly sent out to the public, and when the County did not record code compliance notices as required. The resultant internal policies and procedures should be clearly documented, and provided to the public and County staff for consistency and accountability.	
R14	Currently, the primary classification assigned to the code compliance and enforcement function is the Code Compliance Technician. A technician is considered a para-professional classification, typically defined as a "bridge" class that allows incumbents to obtain the requisite knowledge, skills, and abilities to prepare for the next higher classification. The technician usually performs routine administrative and/or programmatic tasks under close supervision, and is not the appropriate classification to perform code compliance and enforcement tasks that require a high level of discretion, latitude, or independence.	

C. EFFECTIVE AND INNOVATIVE CODE COMPLIANCE PROGRAM

FINDING		RESPONSE
F8	The Board of Supervisors and County staff have identified as their highest priority to work cooperatively with property owners and residents to achieve remediation, whereas existing codes and some procedures place an emphasis on punitive penalties and fines to force compliance. There is currently a conflict of tone between the County's actions and words.	
RECOMMENDATIONS		RESPONSES
R15	State clearly that the County of Mariposa's code compliance and enforcement program is based upon mutual respect and accountability, and violations will be resolved at the lowest possible level with health and safety compliance as the ultimate priority.	
R16	Update existing code compliance and enforcement County Codes, Ordinances, Rules, Regulations, and Policies to ensure the County's code compliance actions are consistent, congruent, clear, and supportive of the specific objective as well as the ultimate priority. The types of current Mariposa County Codes, Ordinances, and Resolutions that the CCAC are reviewing, and plan to make recommendations to the Board of Supervisors includes: (a) Administrative Fines or Civil Penalties; (b) Abatement Actions, including Nuisance, Junk, Abandoned Vehicles, and Dangerous Buildings; (c) Due Process and Appeals; (d) Building Permit Fees; and (e) Enforcement.	
R17	The CCAC has looked at the County's proposed 2019-218 fines and abatement approach, and - as stated earlier in this memorandum - cannot recommend this approach as being appropriate for Mariposa County. The punitive nature of 2019-218 is at odds with the County's stated objectives to work cooperatively with property owners and residents in order to gain code compliance. As a result, the CCAC's recommendation is to permanently reject the proposed Draft Resolution 2019-218	

R18	Develop a code compliance amnesty program. The tone and focus is to develop positive and creative solutions, and identify options to resolve code compliance issues at the lowest possible level. There will be a strong emphasis placed upon effective communication from the County to County property owners and residents. The CCAC will recommend the development of multiple pathways for compliance that include features from LIAP (Santa Cruz County, which identifies and prioritizes code violations by health and safety) and the City of Rialto (which returns a portion of permit fees upon compliance). Additionally, the inclusion of community events and programs that support code compliance will feature prominently in the code compliance amnesty program. ARPA funds may be used to help fund these activities.	
R19	Develop ongoing Mariposa County code compliance programs that focus on community activities and events. This may include providing additional dumpsters designated to outlying transfer stations; low-interest loans; vouchers; rebates; free landfill days; community work clean-up days; providing funding for approved and licensed contractors to perform work for those community members who need assistance; and, remediation activities that support code compliance. ARPA funds may be used to help fund these activities.	

R20	Develop an administrative fines and abatement program. The CCAC is currently discussing enabling administrative fines and an abatement program under the authority of Government Code 25845. The Building Official will have the ability to issue a Notice and Order to Abate. Funds for an abatement program should be identified by the County for the abatement of properties when all other efforts for compliance have been exhausted. These cases typically involve dangerous buildings and neglected properties. The CCAC has discussed using licensed contractors to bid on performing abatement activities on dangerous or neglected properties, to develop a low-interest loan program to provide resolution options for financially-strapped County property owners, and to develop a voluntary abatement program similar to the one that is used by the City of Tempe, AZ. ARPA funds may be used to help fund these activities.	
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R21	Develop a County-specific program for alternative housing and to encourage a wider spectrum of housing options. The CCAC believes that pursuing alternative housing policies are an appropriate topic when discussing code compliance and enforcement activities. There are several local governments, including City of Oakland and Sonoma County, that are trailblazing new ground with changing rules and perspectives. The CCAC believes that providing Mariposa County residents with alternative housing options - for example, allowing homes to only have composting toilets or solar power - may reduce the number of building code violations. The CCAC will coordinate with other County departments and existing housing policies, as necessary. Additionally, a review of the County's RV/Zoning Ordinances should be undertaken to ensure common sense solutions to keep Mariposa County safe and healthy, as well as remove the threat of losing one's home due to potential code compliance violations. For example, if it is currently allowable to live in a RV after a disaster proclamation, then why would that same circumstance of living in a RV be viewed differently and become a code violation without the disaster proclamation? Perhaps there are alternative ways to look at how Mariposa County residents or property owners can legally live with a wider spectrum of housing options.	
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REQUESTED BOARD ACTION

1. Last fiscal year, the CCAC requested American Rescue Plan Act (ARPA) funds to be used towards code compliance activities. Subsequently, \$300,000 in ARPA funds were allocated to the Planning Department for that purpose.

The CCAC requests that the Board of Supervisors continue to earmark these \$300,000 in ARPA funds for code compliance activities and programs, as outlined in this memorandum.

2. If the new Vehicle Abatement Ordinance is approved by the Board of Supervisors, the CCAC requests that the Board of Supervisors direct the Planning Department to provide \$30,000 in ARPA funds to finance the first year of the new Vehicle Abatement Program.
3. The CCAC requests that the Board of Supervisors direct Staff to work with the CCAC to develop a work plan over the next year that prioritizes the implementation of the recommendations contained within this memorandum.

Thank you.



MARIPOSA COUNTY

Board of Supervisors



Agenda Item – No Resolution Requested

MEETING: September 18, 2023
TO: The Board of Supervisors
FROM: Steve Engfer, Planning Director
RE: Discussion and Direction on CCAC Next Steps

RECOMMENDATION AND JUSTIFICATION

Discussion and Direction on CCAC next steps

BACKGROUND AND HISTORY OF BOARD ACTIONS

Board Resolution No. 2021-331 June 8, 2021 Establishing the Code Compliance Advisory Committee.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION

NONE

FINANCIAL IMPACT

None

ATTACHMENTS

None