

**COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT**

**DATE:** November 14, 2012

**TO:** Planning Commission

**FROM:** Planning Staff

**SUBJECT:** Consideration of amendments to the San Mateo County Zoning Regulations that revise Chapter 31 (Enforcement, Legal Procedures, Penalties) and delete Chapter 31.5 (Administrative Fines) in conjunction with recommended changes to the San Mateo County Ordinance Code that add Chapter 1.40 (Administrative Remedies) and amend Chapter 2.60 (Planning and Building Department).

**RECOMMENDATION**

That the Planning Commission recommend that the Board of Supervisors adopt the amendments to Chapters 31 and 31.5 of the San Mateo County Zoning Regulations Ordinance Code in conjunction with the adoption of amendments to the San Mateo County Code that add Chapter 1.40 and amend Chapter 2.60 in order to refine and expand the administrative procedures available to address violations of the County Ordinance Code.

**BACKGROUND**

Government Code Sections 53069.4 and 25132 authorize counties to set forth by ordinance the administrative procedures that govern the imposition, enforcement, collection, and review of fines and penalties issued in response to violations of local codes and ordinances. The Planning and Building Department has been directed by the Board of Supervisors to review and update the County's administrative fines provisions in order to establish greater deterrent to violations and to recover the cost of administering its code compliance program.

In the early 1990s, San Jose was one of the first cities to establish an administrative process as an interim step before filing formal legal action in order to resolve violations of the City code. Shortly thereafter, the legislature enacted Government Code Section 53069.4 to provide statutory authority for such a process. An administrative system emphasizes the use of relatively-small penalties during the early stages of code enforcement efforts that gradually increase if the violation is not abated. Many cities have used San Jose's ordinances as a model to establish their own administrative fine process including the cities of Monterey, San Rafael, Costa Mesa, Santa Maria, Palo Alto and, more recently, the cities of Mountain View, Santa Clara, Merced, and Salinas.

The administrative process is far more efficient and effective than other legal options in resolving outstanding code violations and maintaining ongoing compliance because fines and penalties can be issued and collected by Code Compliance staff, independent of the court system, in instances where violators are uncooperative in resolving the violation. The penalty imposed is relatively small compared to the potential penalties for civil or criminal legal action, but it is significant enough to serve as a deterrent against future violations.

## **DISCUSSION**

### **A. KEY ISSUES**

#### **1. Existing Enforcement Provisions**

The County of San Mateo currently has a variety of enforcement provisions throughout the San Mateo County Ordinance Codes, some of which are confusing and may be contradictory.

The County currently enforces most violations of the Ordinance Code using criminal procedures. While the threat of a criminal action is often very effective in motivating violators to resolve code violations, it does not work as an adequate deterrent in all situations and is a slow- and labor-intensive process for both the County Counsel's office and Code Compliance staff. In addition, the County may eliminate a code violation that threatens the public health and safety through nuisance abatement proceedings. The advantage of nuisance abatement is that the hazardous conditions are eliminated within a very short period of time. The disadvantage is that the County must pay the costs of the abatement upfront, and it can take years to recover the costs of such abatement.

#### **2. Proposed Amendments**

The Planning and Building Department proposes the adoption of the Administrative Remedies Ordinance as an alternative tool that will allow the enforcement of all County ordinance violations through a County administrative citation or a County administrative order. These administrative remedies would be in addition to all other remedies that are currently available through court proceedings. Based on the experience of other municipalities using this approach, staff anticipates the time required to resolve most cases, especially minor violations, will be reduced to weeks or days, as opposed to months or years. The proposed new ordinance would improve the overall effectiveness of the code compliance program and would serve as a deterrent for repeat violators.

The adoption of the Administrative Remedies Ordinance and amendments of the San Mateo County Ordinance Code will help make the County's code

compliance program more effective and enable the County to achieve our mission by regulating land use and development, thus, protecting life and property.

As proposed by staff, the Administrative Ordinance consists of changes and additions to the County Code that include but are not limited to revisions to the County's Zoning Regulations. The Planning Commission must review amendments to the Zoning Regulations prior to the Board's consideration of such amendments. In addition, because the Zoning Regulations are an element of the County's Local Coastal Program Implementation Plan, they will need to be submitted for certification by the California Coastal Commission, after adoption by the Board of Supervisors, in order to take effect in the Coastal Zone.

### 3. Financial Impact

The collection of administrative penalties will help the County recover some of its code compliance costs. The County may also save some costs associated with processing criminal citations. However, by no means shall the administrative penalties be a source of revenue.

## B. COMPLIANCE WITH THE GENERAL PLAN

The proposed amendments to the San Mateo County Ordinance Code and Zoning Regulations will enhance the ability of the County to carry out the provisions of the General Plan by improving staff's ability to enforce the codes and regulations that implement the General Plan, among other ways, by ensuring that the continued growth of the community will occur in a manner that is orderly and harmonious.

## C. ENVIRONMENTAL REVIEW

Adoption of the Administrative Remedies was determined to be exempt from review under the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Title 14 of the California Code of Regulations (the so called "General Rule") because there is no possibility that these regulations, which refine procedures for responding to violations of the County Code, will have the potential to cause a significant effect on the environment.

## D. REVIEWING AGENCIES

County Counsel

## ATTACHMENTS

- A. Recommended Findings
- B. Draft Administrative Remedies Ordinance

County of San Mateo  
Planning and Building Department

**RECOMMENDED FINDINGS**

Adoption of Administrative Fines Ordinance

Hearing Date: November 14, 2012

Prepared By: Steve Monowitz

For Adoption By: Planning Commission

**RECOMMENDED FINDINGS**

That the Planning Commission recommend that the Board of Supervisors adopt the amendments to Chapters 30 and 31.5 of the San Mateo County Zoning Regulations in conjunction with the adoption of revisions to other components of the County Ordinance Code, as shown in Attachment B, by making the following findings:

Regarding the Categorical Exemption, Find:

1. That adoption of these amendments are categorically exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3) because there is no possibility that the ordinance, which impose the regulations of development, will have the potential to cause a significant effect on the environment.

Regarding the Amendments to Chapters 31 (Enforcement, Legal Procedures, Penalties) and 31.5 (Administrative Fines) of the San Mateo County Zoning Regulations, Find:

2. That the amendments to the Zoning Regulations which accompany other revisions to the County Ordinance Code are consistent with and adequate to carry out the General Plan because they will improve staff's ability to enforce the codes and regulations that implement the General Plan.

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**DRAFT**

**ORDINANCE NO. \_\_\_\_\_  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA**

\* \* \* \* \*

**ORDINANCE OF THE COUNTY OF SAN MATEO ADDING CHAPTER 1.40  
(ADMINISTRATIVE REMEDIES) TO THE SAN MATEO COUNTY ORDINANCE  
CODE, AMENDING CHAPTER 2.60 (PLANNING AND BUILDING DEPARTMENT) OF  
THE SAN MATEO COUNTY ORDINANCE CODE TO ADOPT BY REFERENCE THE  
INTERNATIONAL PROPERTY MAINTENANCE CODE, AMENDING CHAPTER 31  
(ENFORCEMENT, LEGAL PROCEDURES, PENALTIES) OF THE SAN MATEO  
ZONING REGULATIONS, AND DELETING CHAPTER 31.5 (ADMINISTRATIVE  
FINES) FROM THE SAN MATEO COUNTY ZONING REGULATIONS**

**WHEREAS**, the County of San Mateo currently has a variety of administrative enforcement provisions scattered throughout its Ordinance Code and other ordinances, which can create confusion for residents seeking to understand the County enforcement mechanisms as well as County staff seeking to use such mechanisms; and

**WHEREAS**, the County of San Mateo desires one clear and practical method of administrative enforcement for violations of the San Mateo County Ordinance Code and other County ordinances; and

**WHEREAS**, the County desires to use administrative penalties and compliance orders to address any and all violations of the Ordinance Code and other ordinances; and

**WHEREAS**, Government Code Sections 53069.4 and 25132 authorize counties to 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.

**NOW, THEREFORE**, the Board of Supervisors of the County of San Mateo,  
State of California, ordains as follows:

**SECTION 1. ORDINANCE AMENDMENT.** Chapter 1.40 (Administrative Remedies) is  
hereby added as follows:

**CHAPTER 1.40**  
**ADMINISTRATIVE REMEDIES**

**SECTION 1.40.010. PURPOSE**

It is the intent of this Chapter to provide the County with remedies to correct violations of the San Mateo County Ordinance Code and other County ordinances. The County's Board of Supervisors hereby finds and determines that enforcement of this Code and other ordinances adopted by the County are matters of local concern and serve important public purposes. Consistent with powers authorized by Government Code Sections 53069.4 and 25132 and successor statutes, as well as the County's general police powers to protect the public health, safety, and welfare, the County adopts this Chapter in order to achieve the following goals:

- (a) To protect the public health, safety and welfare of County residents;
- (b) To provide a method to penalize responsible parties who fail or refuse to comply with provisions of this Code and other County ordinances;
- (c) To provide for an administrative process that has objective criteria for the imposition of penalties;

- (d) To provide an administrative process for ordering compliance with this Code and other County ordinances;
- (e) To provide a fair process for appeal of penalties and compliance orders; and
- (f) To provide an administrative process for abatement of violations, restoration of damages caused by the violation, and collections of costs.

#### **SECTION 1.40.020. REMEDIES CUMULATIVE**

These remedies shall be in addition to any other remedies available at law or equity. Nothing in this Chapter shall prevent the County from using one or more other remedies to address violations, whether those remedies are administrative, civil or criminal.

#### **SECTION 1.40.030. DEFINITIONS**

“Abatement Costs” shall mean, to the extent allowed by law, any costs or expenses reasonably related to the abatement of violations, and shall include, but not be limited to, enforcement, investigation, attorneys’ fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.

“Administrative Costs” shall mean, to the extent allowed by law, the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets. The staff time expended to calculate the above costs and prepare itemized invoices may also be

recovered. Administrative costs are the lesser of actual costs or fifteen percent (15%) of the cost of actual removal or correction.

“Appeal Hearing Form” shall mean the form used to request an appeal of an administrative penalty or order. The forms are available from the Department or from the person listed on the administrative citation.

“Day” shall mean a calendar day.

“Department” shall mean the San Mateo County Planning and Building Department.

“Director” shall mean the Community Development Director or his or her designee.

“Enforcement Officer” shall mean any County employee or agent of the County whose position requires enforcement of any provision of this Code including, but not limited to, code enforcement officers, animal control officers and police officers.

“Violation” or “Violation of this Code” shall mean a violation of the San Mateo County Ordinance Code as well as any County Ordinance, including, but not limited to, Zoning Regulations, Building Regulations, Grading Regulations, Stormwater Regulations, Heritage Tree ordinance, Significant Tree Ordinance, and the International Property Maintenance Code.

#### **SECTION 1.40.040. APPLICABILITY**

The County may impose administrative penalties and compliance orders for any violation of this Code or any County ordinance. Administrative penalties shall be

imposed, collected, and reviewed in compliance with this Chapter. These provisions shall not supersede any other sections of this Code or other County ordinances which address additional legal or administrative remedies available for certain specific violations.

#### **SECTION 1.40.050. ADMINISTRATIVE CITATIONS – PENALTIES AND ORDERS**

- (a) Authority. Whenever an Enforcement Officer determines that a violation has occurred, the Enforcement Officer shall have the authority to follow the provisions of this Chapter to issue an administrative penalty to any and all persons responsible for the violation (including the property owner) and/or to order correction of the violation. These procedures shall not apply where violations present emergencies or immediate danger to public health and safety.
- (b) Warning Notice. Before issuing an administrative citation, the Enforcement Officer shall provide a warning notice which shall contain the following information:
  - (1) Date of the violation;
  - (2) Address or a definite description of the location where the violation occurred;
  - (3) Section of this Code or County Ordinance that was violated and a description of the violation;

- (4) Actions required to correct the violation;
  - (5) Date, at least fourteen (14) days after the notice, by which the violation must be corrected to avoid incurring penalties, abatement proceedings, or other enforcement;
  - (6) Amount of the potential penalty for the violation and the fact that penalties are imposed each day the violation exists; and
  - (7) Name and signature of the citing Enforcement Officer.
- (c) Administrative Citation. Each administrative citation shall contain the following information:
- (1) Date of the violation and any previous correspondence from the County regarding the violation, including the warning notice;
  - (2) Address or a definite description of the location where the violation occurred;
  - (3) Section of this Code or County Ordinance that was violated and a description of the violation;
  - (4) Amount of the penalty for the violation;

- (5) Description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid, and the fact that penalties are imposed each day the violation exists;
- (6) Actions required to correct the violation;
- (7) Order prohibiting the continuation or repeated occurrence of the violation;
- (8) Date, at least fourteen (14) days after the citation, by which the violation must be corrected to avoid abatement proceedings or other enforcement;
- (9) Description of the appeal process, including the time within which the administrative citation may be contested and the department and person from which a Request for Hearing Form to contest the administrative citation may be obtained; and
- (10) Name and signature of the citing Enforcement Officer.

#### **SECTION 1.40.060. NOTICES**

- (a) Whenever notice is required to be given under this Chapter, unless different provisions are otherwise specifically made, such notice may be given either by (1) personal delivery to the person to be notified, or (2) if the violation involves real property, by posting on the property and by depositing in the United States Mail, in a sealed envelope, postage prepaid, and addressed to such person to be notified at the last-known business or residence address as the same appears in

the last equalized County assessment roll or to the records pertaining to the matter. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle.

- (b) Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

#### **SECTION 1.40.070. AMOUNT OF PENALTIES**

- (a) Unless otherwise provided, the amounts of the penalties imposed for any other violation shall be \$100 for a first violation, \$200 for a second violation within twelve (12) months, and \$500 for third and additional violations within twelve (12) months. The penalties shall be included in the schedule of penalties and fees established by resolution of the County's Board of Supervisors.
- (b) The schedule of penalties shall specify the amount of any late payment charges imposed for the payment of a penalty after its due date. Penalties shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the twentieth (20th) day after the penalty becomes the final decision or order.

#### **SECTION 1.40.080. PAYMENT OF THE PENALTY**

- (a) The penalty shall be paid to the County within fourteen (14) days from the date of the administrative citation.

- (b) Payment of a penalty shall not excuse or discharge any continuation or repeated occurrence of a violation that is the subject of the administrative citation.

#### **SECTION 1.40.090. APPEAL PROCESS**

- (a) Any recipient of an administrative citation may request an appeal hearing to contest that there was a violation or that he or she is the responsible party by completing a Request for Hearing Form and returning it to the County within fourteen (14) days from the date of the administrative citation, together with a processing fee listed in the County's fee schedule and an advance deposit of the penalty.
- (b) A Request for Hearing Form may be obtained from the Department and person specified on the administrative citation. The Request for Hearing Form shall include a brief statement of material facts supporting the appellant's claim that no violation occurred or no penalties or other remedies shall be imposed.

#### **SECTION 1.40.100. HEARING OFFICER**

The Director shall designate a Hearing Officer for the appeal hearings. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citations upheld by the Hearing Officer.

#### **SECTION 1.40.110. HEARING PROCEDURE**

- (a) The Hearing Officer shall conduct hearings in two situations:
  - (1) If a violation exists after the compliance date set forth in the citation, the Enforcement Officer may arrange a hearing on a proposed compliance order before the Hearing Officer.
  - (2) If an appellant appeals pursuant to the procedures set forth in Section 1.40.090, including deposit of a penalty, a hearing will be arranged before the Hearing Officer.
- (b) The appeal hearing shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the Request for Hearing is filed in accordance with the provisions of this Chapter, unless the Director determines that the matter is urgent or that good cause exists for an extension of time. The appellant shall receive notice of the time and place at least ten (10) days prior to the hearing.
- (c) Documentary evidence and names of potential witnesses shall be provided by the Enforcement Officer and the appellant to the Hearing Officer and the opposing party at least five (5) days prior to the hearing. Documents not provided at least five (5) days before the hearing must be provided at the hearing and may be considered by the Hearing Officer at his or her discretion.

- (d) At the hearing, the appellant shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- (e) The failure of any appellant to appear at the appeal hearing shall constitute a forfeiture of the penalty and a failure to exhaust administrative remedies.
- (f) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.

**SECTION 1.40.120. HEARING OFFICER'S DECISION AND ADMINISTRATIVE ORDER**

- (a) The Hearing Officer shall only consider evidence that is relevant to whether the violation occurred and whether the responsible person has caused or maintained the violation on the date specified in the administrative citation. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel all or part of the administrative citation and shall list the reasons for that decision.
- (b) The decision of the Hearing Officer shall include findings regarding the evidence in the record and submitted at the hearing, as well as the existence of any violation.
- (c) If the Hearing Officer determines that the administrative penalty should be upheld, then the County shall retain the penalty amount on deposit with the County. If the

Hearing Officer determines that the administrative penalty should be canceled, the County shall promptly refund the amount of the deposited penalty.

- (d) If the Hearing Officer determines that the proposed compliance order should be issued, the decision shall include an administrative order to cease and/or remove the structures, uses, or activities that are the subject of the violation, and to take whatever corrective actions are needed to offset the impacts caused by the violation, including a schedule where appropriate, as well as a warning that failure to correct the violation may result in County abatement and collection of its costs as a personal obligation, recordation of a lien, or recordation of a special assessment. If the Hearing Officer determines that the compliance order should be canceled, it shall so state.
- (e) The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision in the same manner that the initial citation was provided.
- (f) The decision of the Hearing Officer shall be the final decision of the County. To the extent allowed by law, the decision and administrative order shall have the same force and effect as a resolution of the County Board of Supervisors for the purpose of filing a lien, special assessment, or for pursuing any other method of collection.

### **SECTION 1.40.130. RIGHT TO JUDICIAL REVIEW**

Any person aggrieved by an administrative decision of a Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in San Mateo County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4 and Civil Code Sections 1094.5 and 1094.6.

### **SECTION 1.40.140. ABATEMENT**

- (a) If the violation is not corrected within the schedule listed in the Hearing Officer's decision, the County or a contracting agent hired by the County may enter onto the property on which the violation exists for the purpose of abating the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the County or its contracting agents to enter upon the property for the purpose of abatement.
- (b) The cost of any such abatement by the County shall be borne by the property owner, which cost shall include any administrative costs allowed by law as well as the actual costs of abatement.

### **SECTION 1.40.150. RECOVERY OF PENALTIES AND ABATEMENT COSTS**

- (a) The County may collect any past due administrative citation penalty, late payment charge, and costs of collection by use of any and all available legal means.

- (b) The County may collect any abatement and administrative costs by use of any and all available legal means, including, but not limited to, a personal obligation against the property owner, or as a lien or special assessment recorded on the property.

**SECTION 2. ORDINANCE AMENDMENT.** Chapter 2.60 (Planning and Building Department) of the San Mateo County Ordinance Code is hereby amended to add Section 2.60.040 (International Property Maintenance Code) as follows:

Section 2.60.040 – International Property Maintenance Code

The International Property Maintenance Code is hereby adopted by reference and may be enforced by the Planning and Building Department.

**SECTION 3. ORDINANCE AMENDMENT.** Section 6593 of Chapter 31 (Enforcement, Legal Procedures, Penalties) of the San Mateo County Zoning Regulations is hereby amended as follows (deletions in strikethrough, additions in italics).

Section 6593. ~~Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of any of the provisions of this Part shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than three hundred dollars (\$300) or by imprisonment in the County Jail of said County for a term not exceeding three (3) months or by both such fine and imprisonment. Such person, firm, or corporation shall be deemed guilty of a separate offense for each and every day during which any portion of which any~~

~~violation of this Part is committed, continued, or permitted by such person, firm, or corporation and shall be punishable as herein provided. Violations of these Zoning Regulations shall be punishable pursuant to Chapter 1.40 (Administrative Remedies) of the San Mateo County Ordinance Code.~~

**SECTION 4. ORDINANCE AMENDMENT.** Section 6594 of Chapter 31 (Enforcement, Legal Procedures, Penalties) of the San Mateo County Zoning Regulations is hereby deleted in its entirety.

**SECTION 5. ORDINANCE AMENDMENT.** Chapter 31.5 (Administrative Fines) of the San Mateo County Zoning Regulations is hereby deleted in its entirety.

**SECTION 6. SEVERABILITY.** If any provision(s) of this Ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the Ordinance.

**SECTION 7. EFFECTIVE DATE.** Outside of the Coastal Zone, this Ordinance shall be effective thirty (30) days from the passage date thereof. Within the Coastal Zone, this Ordinance shall be effective immediately upon final certification of the Coastal Commission.

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