

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 1.22 OF THE MONTEREY COUNTY CODE RELATING TO
CODE ENFORCEMENT**

County Counsel Summary

This ordinance amends Chapter 1.22, the Administrative Remedies for Code Enforcement chapter of the Monterey County Code to further define “hearing officer” which would allow the County to use an alternative hearing officer program, in addition to the Administrative Law Judge provided by the State of California Office of Administrative Hearings. This ordinance also adds sections dealing with confidentiality when filing complaints, addressing warrants and the refusal to permit inspections, adding a department-level resolution of violations in lieu of a hearing with a Hearing Officer, and adding a section regarding treble costs as provided for in state law. Other minor amendments are proposed which clarify administrative procedures for Code Enforcement.

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

SECTION 1. FINDINGS AND DECLARATIONS.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens. The amendments to Chapter 1.22 made by this ordinance protect and promote the public health, safety and welfare by clarifying administrative procedures that govern the enforcement for violations of the Monterey County Code and state laws delegated by statute to the County for enforcement.

B. The amendment expands the definition of a Hearing Officer who will conduct administrative hearings in connection with activities of enforcement of the various provisions of the Monterey County Code, providing flexibility to the County and allowing the County to render timely, clear and concise decisions on code enforcement matters.

C. The amendment further provides for a department-level resolution process in lieu of a hearing with the Hearing Officer, providing property owners an alternative and informal means to address and cure violations cooperatively with the County.

D. The adoption of this ordinance is categorically exempt under the California Environmental Quality Act pursuant to CEQA Guidelines section 15308 because it adopts amendments to the procedures for administering remedies for code enforcement, which include department level and hearing officer resolutions, which lead to the abatement of code violations, thereby protecting the environment.

SECTION 2. The Table of Contents of Chapter 1.22 of the Monterey County Code shall be amended to read as follows:

Chapter 1.22 ADMINISTRATIVE REMEDIES FOR CODE ENFORCEMENT

- 1.22.010 Purpose and scope.
- 1.22.020 Definitions.
- 1.22.021 Confidentiality in connection with filed complaints.
- 1.22.022 Warrants for abatement and inspection.
- 1.22.023 Refusal to permit inspection pursuant to court-issued inspection warrants.
- 1.22.030 Notice of violation.
- 1.22.035 Notice of violation recordation.
- 1.22.036 Department-level resolution for notice of violation.
- 1.22.040 Required hearing for notice of violation.
- 1.22.050 Notice of hearing.
- 1.22.060 Powers and duties of hearing officer.
- 1.22.070 Hearing procedures for notice of violations.
- 1.22.080 Decision and administrative order.
- 1.22.090 Compliance orders and administrative penalties.
- 1.22.100 Administrative citations and fines.
- 1.22.110 Administrative costs.
- 1.22.120 Financial hardship waiver.
- 1.22.130 Right of judicial review.
- 1.22.140 Compliance report.
- 1.22.150 Collection of penalties, fines, and costs.
- 1.22.160 Lien and special assessment procedure.
- 1.22.161 Treble Costs.
- 1.22.170 Attorneys' fees.
- 1.22.180 Code enforcement fund.
- 1.22.190 Annual reporting requirements.
- 1.22.200 Violations.
- 1.22.210 Transfer of Title, Interest or Possession.

SECTION 3. The heading of Section 1.22.020 of the Monterey County Code is amended to read as follows:

Definitions.

SECTION 4. The following definitions shall be added to Section 1.22.020 of the Monterey County Code to read as follows:

“Abatement” means the removal of the condition or conditions identified in the notice of violation.

“Assessment” means the special assessment which may be assessed against a parcel of land as authorized by Section 25845 of the Government Code to recover the County’s cost of abatement of public nuisance.

“Code” means the Monterey County Code.

“Lien” means the legal document generally recorded against real property to secure the payment of a debt.

SECTION 5. The following definitions within Section 1.22.020 of the Monterey County Code shall be amended to read as follows:

"Hearing Officer" means a person designated by the Board of Supervisors to conduct an administrative hearing. The designated Hearing Officer shall be an impartial person, such as:

1. An administrative law judge provided by the State of California Office of Administrative Hearings to function as the County Hearing Officer pursuant to Chapter 14 of Part 3 of Division 2 of Title 3 of the Government Code.

2. A person selected randomly from a panel of attorneys willing to serve as a Hearing Officer; or,

3. An independent contractor hired from an organization which provides Hearing Officers.

SECTION 6. Section 1.22.021 is added to Chapter 1.22 of the Monterey County Code to read as follows:

1.22.021 Confidentiality in connection with filed complaints.

The County shall take all reasonable steps to ensure that the identity of any person making a complaint to the County concerning a violation of the Code or other applicable law shall remain confidential. However, no enforcement action shall be taken beyond issuance of a notice of violation unless:

A. The complaining witness agrees to be identified upon request of the responsible party; or

B. The Enforcement Official has developed sufficient evidence to take further action.

SECTION 7. Section 1.22.022 is added to Chapter 1.22 of the Monterey County Code to read as follows:

1.22.022 Warrants for abatement and inspection.

Nothing in this chapter shall prohibit or preclude the County from seeking an abatement and/or an inspection warrant at any time and independent from any other remedy provided by the

Code and/or any applicable statute, rule, code or regulation. All costs incurred by the County in seeking and obtaining a warrant shall be recoverable as administrative costs.

SECTION 8. Section 1.22.023 is added to Chapter 1.22 of the Monterey County Code to read as follows:

1.22.023 Refusal to permit inspection pursuant to court-issued inspection or abatement warrants.

Any property owner, occupant or tenant who refuses to permit an inspection pursuant to any court issued warrant may be subject to arrest for a misdemeanor. Forcible execution of said inspection or abatement warrant under such circumstance shall be permitted only if the warrant expressly grants permission for such forcible entry.

SECTION 9. Subsection B of Section 1.22.030 of the Monterey County Code is amended to read as follows:

B. A notice of violation issued pursuant to this Chapter shall contain all of the following information:

1. The date and location of the violation;
2. The section of the Code violated and a description of the violation;
3. The actions required to correct the violation;
4. An order prohibiting the continuation or repeated occurrence of the violation;
5. The time period after which an administrative penalty or administrative fine will begin to accrue if compliance has not been achieved;
6. The potential daily and cumulative amounts of any administrative penalty for a compliance order or established fine amount for an administrative citation;
7. The eligibility of tenants of residential rental units for relocation benefits pursuant to Article 2.5 of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, if applicable;
8. A description of the fine payment process for any administrative citation, including a description of the time within which and the place to which the fine shall be paid; and,
9. The name and signature of the Enforcement Official who issued the notice of violation.

SECTION 10. Subsection E of Section 1.22.030 of the Monterey County Code is amended to read as follows:

E. Where real property is involved, a copy of the notice of violation shall also be sent by either first class mail, or personal delivery to the record owner of each assessors parcel that is the subject of the notice of violation, the holder of any mortgage or deed or trust of record, if known, and any other person known to have a legal interest in the property.

SECTION 11. Subsection H is added to Section 1.22.030 of the Monterey County Code to read as follows:

H. Proof of service of the notice of violation shall be documented at or near the time of service.

SECTION 12. Subsection D of Section 1.22.035 of the Monterey County Code is amended to read as follows:

D. Removal of notice of violation. The Enforcement Official shall submit the "Removal of Notice of Violation" to the County Recorder for recordation when the violation no longer exists, all required work to abate the violation has been completed, and all related abatement and administrative costs have been reimbursed to the County and approved as determined by the Enforcement Official or Hearing Officer on appeal. A fee shall be paid by the owner or occupant for processing the "Removal of Notice of Violation". The fee for the submittal of the "Removal of Notice of Violation" shall be set from time to time by the Board of Supervisors.

SECTION 13. Section 1.22.036 is added to Chapter 1.22 of the Monterey County code to read as follows:

1.22.036 Department-level resolution for notice of violation.

Prior to requesting a hearing before the Hearing Officer as provided in this chapter, the recipient(s) of said notice of violation may contact the County at the number provided on the Notice to schedule a meeting with County staff for a department-level resolution of the alleged violation(s). The County shall provide staff available to meet for this purpose. At the conclusion of the meeting, the County may issue an extension of time to cure the violation or negotiate other abatement remedies.

SECTION 14. Subsection A of Section 1.22.050 of the Monterey County Code is amended to read as follows:

A. When a hearing is required in accordance with the provisions of this Chapter, the Enforcement Official shall cause a written notice of hearing to be sent by first class mail to or be personally served on the alleged violator. If after diligent search, the Enforcement Official is unable to locate the alleged violator, the written notice of hearing may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days.

SECTION 15. Subsection B of Section 1.22.050 of the Monterey County Code is amended to read as follows:

B. Where real property is involved, a copy of the notice of hearing shall also be sent by first class mail to or be personally served on the record owner of each assessors parcel that is the subject of the notice of violation, the holder of any mortgage or deed or trust of record, if known, and any other person known to have a legal interest in the real property.

SECTION 16. Subsection G of Section 1.22.050 is amended to read as follows.

G. When a hearing is held to authorize the recording of a lien or imposition of a special assessment, the Enforcement Official shall serve notice of the hearing in the same manner as prescribed in Subsections A. and B.

SECTION 17. Subsection H is added to Section 1.22.050 of the Monterey County Code to read as follows:

H. Proof of service of the hearing notice shall be documented at or near the time of service.

SECTION 18. Subsection E of Section 1.22.070 of the Monterey County Code is amended to read as follows:

E. In lieu of personally appearing at an administrative hearing, the alleged violator or Enforcement Official may request that the Hearing Officer decide the matter based on the notice of violation itself and any other documentary evidence submitted by the alleged violator or enforcement official before the hearing date.

SECTION 19. Subsection D of Section 1.22.080 of the Monterey County Code is amended to read as follows:

D. Where real property is involved, the Hearing Officer shall cause an official copy of the written decision and administrative order to be sent by certified mail to the record owner of each assessors parcel that is the subject of the notice of violation, the holder of any mortgage or deed or trust of record, if known, and any other person known to have a legal interest in the real property. The Enforcement Official shall provide the Hearing Officer with all such names and addresses as known from public records or otherwise reasonably obtainable.

SECTION 20. Subsection D of Section 1.22.090 of the Monterey County Code is amended to read as follows:

D. Administrative penalties imposed by the Hearing Officer shall accrue from the date specified in the compliance order and shall cease to accrue on the actual date the violation is corrected as determined by the Enforcement Official or the Hearing Officer, subject to the maximum amount set forth in Subsection A. The person responsible for the violation shall submit evidence to support the actual date of correction prior to verification by the Enforcement Official.

SECTION 21. Subsection D of Section 1.22.150 of the Monterey County Code is amended to read as follows:

D. If the Hearing Officer orders the imposition of a special assessment, the Enforcement Official shall immediately record a certified copy of the order in the Office of the County Recorder and transmit a copy of the order to the County Auditor on or before the tenth day of August following such order, and the Auditor shall enter the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll.

The Tax Collector shall include the amount of the assessment on bills for taxes levied against the respective parcels of land. The amounts of monies owed as confirmed in the order of the Hearing Officer shall constitute a special assessment against such property and are a lien on the property for the amount of the respective assessment.

SECTION 22. Subsection G of Section 1.22.150 of the Monterey County Code is amended to read as follows:

G. Recordation of a notice of abatement lien pursuant to this Section 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 Hearing Officer or Enforcement Official, 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.

SECTION 23. Section 1.22.161 is added to Chapter 1.22 of the Monterey County Code to read as follows:

1.22.161 Treble Costs.

Pursuant to Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two year period finding that an owner is responsible for a condition that may be abated pursuant to Government Code Section 25845, a court may order the owner to pay treble the costs of abatement.

SECTION 24. Section B of 1.22.200 is repealed.

SECTION 25. Subsection C of Section 1.22.200 is renumbered to be Subsection B.

SECTION 26. Section 1.22.210 is added to Chapter 1.22 of the Monterey County Code to read as follows:

1.22.210 Transfer of Title, Interest or Possession.

A. It shall be unlawful for the owner of any real property to sell, transfer, mortgage, lease, or otherwise dispose of any real property knowing there is a notice of violation involving

that real property until the violations are corrected or until such owner first furnishes the grantee, transferee, mortgagee, or lessee owner with a true copy of any such notice of violation and shall furnish to the Enforcement Official a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging the receipt of a true copy of such notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such documents or stating intentions to timely challenge such notice of violation. Failure to provide notice as required in this Section is a misdemeanor. The transfer of ownership in violation of this Section shall not abrogate the transfer.

B. Upon transfer of any property with a violation on file indicating the property is unsafe, dangerous or otherwise not habitable, the new owner shall not occupy or use the property until the Enforcement Official gives consent.

SECTION 27. CROSS REFERENCE CONFORMITY. The Clerk of the Board of Supervisors, upon the concurrence of the County Counsel, is authorized to make such changes to the other provisions of the Monterey County Code to provide for the accuracy of cross references in the County Code to the chapters and sections amended and added by this ordinance.

SECTION 28. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any other part thereof be unconstitutional or invalid.

SECTION 29. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T :

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

LESLIE J. GIRARD
CHIEF ASSISTANT COUNTY COUNSEL

By: _____
Deputy