



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legislation Details (With Board Report)

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|----------------------|------------|----------------------|----------------------------------|
| File #: | ORD 20-010 | Name: | Archaeological Penalty Ordinance |
| Type: | Ordinance | Status: | RMA Administration - Consent |
| File created: | 6/23/2020 | In control: | Board of Supervisors |
| On agenda: | 7/7/2020 | Final action: | 7/7/2020 |

Title: a. Find that adoption of this ordinance is categorically exempt from the California Environmental Quality Act as an action to preserve and protect the environment pursuant to Title 14 California Code of Regulations 15308; and
b. Introduce, waive reading, and set July 28, 2020 (Consent) to adopt an ordinance adding new Section 1.22.105 to Chapter 1.22 of the Monterey County Code relating to administrative remedies for violations of requirements to monitor and protect archeological and cultural resources in the unincorporated area of the County of Monterey, and setting fines of \$2,000 for the first day, \$3,000 for the second day, and \$5,000 per day thereafter to a maximum of \$50,000.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A – Ordinance Archeological Penalties, 3. Item No. 41 Completed Board Order

| Date | Ver. | Action By | Action | Result |
|----------|------|----------------------|--------|--------|
| 7/7/2020 | 1 | Board of Supervisors | | |

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b. Introduce, waive reading, and set July 28, 2020 (Consent) to adopt an ordinance adding new Section 1.22.105 to Chapter 1.22 of the Monterey County Code relating to administrative remedies for violations of requirements to monitor and protect archeological and cultural resources in the unincorporated area of the County of Monterey, and setting fines of \$2,000 for the first day, \$3,000 for the second day, and \$5,000 per day thereafter to a maximum of \$50,000.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- Find that adoption of this ordinance is categorically exempt from the California Environmental Quality Act as an action to preserve and protect the environment pursuant to Title 14 California Code of Regulations 15308; and
- Introduce, waive reading and set July 28, 2020 (Consent) to adopt an ordinance adding new Section 1.22.105 to Chapter 1.22 of the Monterey County Code relating to administrative remedies for violations of requirements to monitor and protect archeological and cultural resources in the unincorporated area of Monterey County.

SUMMARY/DISCUSSION:

On June 16, 2020, the Board of Supervisors provided direction for staff to prepare an ordinance that strengthens Monterey County's enforcement and increase fines related to non-compliance with conditions to protect cultural resources. Standard conditions are added to development projects in areas of high archaeological sensitivity and are meant to protect tribal and other cultural resources.

County Code Section 1.22 allows staff to assess financial penalties for non-compliance with project conditions of approval on a daily basis for each day that a violation exists. Pursuant to section 1.22.100, for all violations except those pertaining to local building and safety codes, an Administrative Citation may be levied to impose the following fines:

- First day: A fine not exceeding one hundred dollars (\$100.00)
- Second day: A fine not exceeding two hundred dollars (\$200.00)
- Third day and beyond: A fine not exceeding five hundred dollars per day (\$500.00)

Limitations arise in certain cases where the County may want to impose more severe penalties based on the nature of the violation. The draft ordinance adds a section specifically establishing the amount which the County can impose to penalize those who violate requirements (i.e., conditions) to monitor and protect archeological and cultural resources.

RMA has consulted with the Office of the County Counsel and determined that an ordinance may be adopted to increase the amount of fine beyond the amounts included in Monterey County Code Chapter 1.22, as a civil penalty rather than an infraction or misdemeanor. In determining the extent to which administrative penalties can be increased or added staff considered various factors, including how to create equity in the amount of fines where the value of property could result in a takings if a penalty above the value of the property were to be assessed.

The draft ordinance would allow a County Enforcement Official to issue an administrative citation that imposes the following fines in the event that that a requirement to monitor and protect archeological and cultural resources is violated:

1. A fine not exceeding two-thousand dollars (\$2,000.00) for the first violation (Day 1);
2. A fine not exceeding three-thousand dollars (\$3,000.00) for the second violation (Day 2); and
3. A fine not exceeding five-thousand dollars (\$5,000.00) for the third violation (Day 3+).

A key consideration for creating equity with varying property values is that the cumulative amount of fines imposed shall not exceed fifty-thousand dollars (\$50,000.00).

CEQA:

Consideration of an ordinance is a project subject to CEQA. This ordinance would add regulations to help preserve and protect the environment (cultural resources). Therefore, adoption of this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Title 14 California Code of Regulations Section 15308.

OTHER AGENCY INVOLVEMENT:

Office of County Counsel has approved the draft ordinance as to form.

FINANCING:

Funding for staff time associated with bringing this Ordinance to the Board is included in the FY2019-20 Adopted Budget for RMA. County Counsel does not charge their time directly to County General Fund Units as these costs are accumulated and allocated through the Countywide Cost Allocation Plan (COWCAP).

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This Referral is intended to ensure proper management of our land resources, including archaeological and

Tribal cultural resources.

Check the related Board of Supervisors Strategic Initiatives:

☐ Economic Development

☒ Administration

☐ Health & Human Services

☐ Infrastructure

☐ Public Safety

Prepared by: Carl P. Holm, AICP, RMA Director

The following attachment is on file with the RMA:

Attachment A - Ordinance Archeological penalties

cc: Front Counter Copy; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; OCEN Tribe