

MARIPOSA COUNTY ORDINANCE NO. 967

AN ORDINANCE AMENDING CHAPTER 17.144 OF THE MARIPOSA COUNTY CODE, ENFORCEMENT TO CHANGE THE PENALTY FOR ENFORCEMENT FROM A MISDEMEANOR TO AN INFRACTION; IDENTIFYING THE ZONING ENFORCEMENT OFFICER AS THE PLANNING DIRECTOR; REQUIRING BOARD APPROVAL OF ENFORCEMENT ADMINISTRATIVE PROCEDURES; AND ESTABLISHING A SYSTEM FOR INVESTIGATION, APPEAL, AND RESOLUTION OF ENFORCEMENT MATTERS.

Whereas, California law requires counties to enact zoning regulations for purposes of carrying out the General Plan and protecting public health, safety, and general welfare; and

Whereas, the County of Mariposa has enacted Title 17, Mariposa County Code, Zoning, for purposes of zoning regulations; and

Whereas, zoning regulations are a police power of the County, and require administration, implementation, and enforcement; and

Whereas, the Board of Supervisors of the County of Mariposa are desirous of an enforcement program that meets County needs and satisfies Board policy,

Now, therefore, the Board of Supervisors of the County of Mariposa, a political subdivision of the State of California, hereby ordain as follows:

Section 1: The Board of Supervisors finds and declares:

1. The enactment of this code amendment results in a project to provide for the enforcement of County land development regulations. Enforcement of regulations are necessary to protect the public health, safety, and general welfare. Regulation enforcement also provides for protection of the environment. The enactment of the amendments to Chapter 17.144 of the Mariposa County Code does not have a significant effect on the environment. A negative declaration is approved.
2. The amendment to Chapter 17.144 is derived from continuous and consistent public comments to the Planning Commission and Board of Supervisors about a perceived lack of enforcement of zoning issues. Zoning is enacted to protect the public health, safety, and general welfare. A purpose of zoning is to protect property rights of land owners in a fair and equitable manner. The amendment provides for a fair, efficient, and predictable system that is designed to achieve compliance.
3. In order to ensure a working General Plan, zoning regulations are enacted as a primary implementation tool. The General Plan incorporates policies to protect the public health, safety, and general welfare. The Plan provides for standards for safe development. The Plan is intended to achieve long terms goals for the County. Failure to enforce implementation, such as zoning, is contrary to the requirements of the Plan. The amendment to Chapter 17.144 provides a tool for use by County staff to carry out General Plan mandates.
4. State law and County policy require that regulations be enforced. The amendments to Chapter 17.144 provide a system for appropriate enforcement as required by California statutes and local policy.
5. The amendments to Chapter 17.144 create a system that provides a certain administrative process to ensure that the Board's policies on enforcement are achieved.

Section 2: Chapter 17.144, Enforcement, of the Mariposa County Code shall be amended to read as follows:

**“Chapter 17.144
ENFORCEMENT¹**

Sections:

§17.144.010	Purpose.
§17.144.020	Zoning enforcement administration.
§17.144.030	Extent of zoning enforcement .
§17.144.040	Lawfulness of permits and licenses.
§17.144.050	Declaration of public nuisance.
§17.144.060	Violation constitutes infraction.
§17.144.070	Role of the Planning Director.
§17.144.080	Right to appeal.
§17.144.090	Role of the Planning Commission.
§17.144.100	Role of the Board of Supervisors.

§17.144.010 Purpose.

The purpose of this Chapter is to provide for the resolution of violations of this Title. The objective of the Board of Supervisors is to obtain compliance with the code and to provide reasonable opportunities for the County and property owners to work together for this purpose.

§17.144.020 Zoning enforcement administration.

A. For purposes of this Title, the Planning Director shall act as the zoning enforcement officer of the county and take such actions as necessary to assure fair and equal enforcement of this Title.

B. The zoning enforcement officer shall be governed by the provisions of this Title and shall be responsible for administering its provisions as directed by the Board of Supervisors.

C. The planning director shall be responsible for the preparation of written administrative guidelines for the implementation of this Chapter to be approved by the Board of Supervisors.

§17.144.030 Extent of zoning enforcement.

It shall be the duty of the zoning enforcement officer to enforce the provisions of Title 17 pertaining to the use of land or buildings, and the: erection, construction, reconstruction, moving, alteration, or addition to any building or structures.

§17.144.040 Lawfulness of permits and licenses.

Any permit or license of any type issued by any department or officer of the County, issued in conflict with the provisions of this Title, shall be null and void.

¹ Amended July 10, 2001.

§17.144.050 Declaration of public nuisance.

Upon adoption of this Title, any land, buildings or structures: erected, constructed, altered, enlarged, converted, moved or used contrary to the provisions of this Title, or any failure to comply with the conditions attached to the granting of any development permit, special use permit or variance is hereby declared to be unlawful and a public nuisance. The Planning Commission may, after conducting a noticed hearing, declare a use located on any parcel within the county a public nuisance. The subject use must be found to be a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons. The County Counsel shall commence the necessary action or proceedings for the abatement, removal and enjoining thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in this Title or any other law or ordinance.

§17.144.060 Violation constitutes an infraction.

A. Any person, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Title is guilty of an infraction, and if found guilty by a court of competent jurisdiction shall be punished by a fine as specified in Section 1.20.030 of the County Code. As specified in §1.20.040A, separate offense shall have been committed for each and every day during which a violation of any portion of this Title persists.

B. The number of violations for which a violator may be fined shall commence from the date of the Notice of Violation, but shall not include any days during the period in which the matter is being appealed. The daily count of violations resumes again upon the conclusion of the appeal period, which shall be defined as the date of the final administrative action.

C. The decision to issue a citation shall be subject to the review and approval of County Counsel.

§17.144.070 Role of the Planning Director.

A. When a request for investigation of an alleged violation of this Title is received, the Planning Director shall cause an investigation to be commenced to determine the validity of the complaint and the nature of the violation.

B. After an investigation alleges there may be a violation, the Director shall cause a "Notice of Intent to Find a Zoning Violation" to be mailed to the property owner of record. The Notice shall explain to the property owner that an investigation has been completed and the Director is prepared to find a zoning violation exists. The Notice shall inform the property owner that the Director will make this finding in fourteen calendar days from the date of the Notice. The Notice of Intent will explain the process for resolving violations and offer an opportunity for the property owner to contact the Planning Department prior to the filing of the Notice of Violation. The Notice shall be written in plain language recognizing that the Department is making an early notification and has not made a final determination whether or not there is a violation. The form of the Notice of Intent to Find A Zoning Violation shall be included in the Procedures required by this Chapter.

C. If the Director finds that a violation allegedly exists, the written correspondence with the property owner shall always include a description of the procedures or the right to appeal the decision to the Planning Commission or Board of Supervisors.

§17.144.080 Right to Appeal

A. Any person notified of an alleged violation of this Title shall have the right to appeal the determination to the Planning Commission or the Board of Supervisors.

B. The person may appeal:

1. the determination that a violation allegedly exists;
2. the proposed remedy to resolve the alleged violation; or
3. the proposed timeline for accomplishing the remedy.

C. The appeal shall be filed with the County within twenty calendar days of the date of the notification of the alleged violation pursuant to the requirements of Chapter 17.136. The appellant may select to appeal to the Planning Commission or directly to the Board of Supervisors. Appealing this matter to the Planning Commission does not preclude a later appeal to the Board of Supervisors pursuant to this Chapter.

§17.144.090 Role of the Planning Commission

A. The Planning Commission shall conduct a hearing with notice pursuant to this Title. The Commission shall conduct the appeal hearing to accomplish the purpose of this Chapter.

1. Based upon the reason for the appeal, the Commission may find that there is a violation or it may find that there is insufficient evidence in the record to support the finding that a violation exists. If the Commission finds that there is no violation, the matter is closed.

2. If the Commission finds that there is a violation of this Title, it may concur with the Director's proposed remedies, it may modify the proposed remedies, or it may establish a timeline by which the violation is to be resolved.

B. Any action of the Planning Commission concerning a violation may be appealed to the Board of Supervisors pursuant to the requirements of Chapter 17.136. The appeal may be filed by the alleged violator or by any interested party, and shall be filed within 20 calendar days of the date of the Commission's action.

C. If an appeal is not filed in a timely manner, the Planning Director shall turn the Planning Commission's decision to County Counsel for a decision to pursue the violation as a public nuisance or as an infraction of the County Code.

§17.144.100 Role of the Board of Supervisors

A. The Board of Supervisors shall conduct a hearing with notice pursuant to this Title. The Board shall conduct the appeal hearing to accomplish the purpose of this Title. The Board shall review the results of the Planning Director's investigation. If the matter was previously appealed to the Planning Commission, the Board shall consider the Commission's findings. The Board shall also receive comment from the person alleged to have violated this Title and from any aggrieved party.

1. Based upon the record before it, the Board shall render its decision. The decision of the Board is the final administrative action before the County. The Board may find that the matter is a violation of this Title. The Board may find that no violation exists. The Board's decision is final.

2. If the Board finds that a violation exists, it shall order a remedy and time frame for completion to be implemented to accomplish the purposes of this Title.

B. The Board shall refer this matter to County Counsel, who shall be responsible for taking further action if the remedy is not successfully implemented within the assigned time frame.

Section 3: This ordinance shall become effective thirty days after the date of enactment.

Passed and adopted by the Board of Supervisors of the County of Mariposa this tenth day of July, 2001, by the following vote:

Ayes: Balmain, Parker, Reilly, Stewart

Nays: None

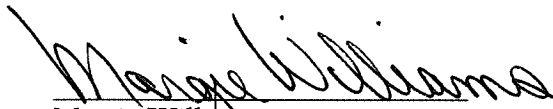
Absent: Pickard

Abstain: None

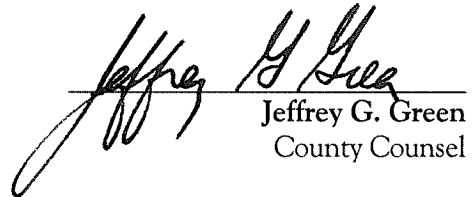


Doug Balmain, Chair
Board of Supervisors

Attest:



Margie Williams
Clerk of the Board



Jeffrey G. Green
County Counsel

Mariposa County Board of Supervisors



District 1.....PATTI A. REILLY
District 2.....DOUG BALMAIN
District 3.....ROBERT C. STEWART
District 4.....GARRY R. PARKER
District 5.....BOB PICKARD

GREGORY G. ITURRIA
County Administrative Officer

MARGIE WILLIAMS
Clerk of the Board

P.O. Box 784
MARIPOSA, CALIFORNIA 95338
(209) 966-3222
1-800-736-1252

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ACKNOWLEDGMENT RE NEWSPAPER PUBLICATION

[Instructions: Please have a representative with the GAZETTE complete the following acknowledgment of receipt regarding legal publications and fax to (209) 966-5147. Please forward the billing request to the Mariposa County Board of Supervisors, Post Office Box 784, Mariposa, California 95338. Should you have any questions, please contact our office (attention: Patricia) at (209) 966-3222. Thank you.]

I, Desi Farias Jones hereby acknowledge receipt of the
(Print Name)
following document (s) for legal publication in the July 19, 2001, issue of the "Mariposa Gazette," on this 16th day of July, 2001.

MARIPOSA COUNTY ORDINANCE NO. 967

AN ORDINANCE AMENDING THE CHAPTER 17.144 OF THE MARIPOSA COUNTY
CODE, ENFORCEMENT TO CHANGE THE PENALTY FOR THE ENFORCEMENT FROM
A MISDEMEANOR TO AN INFRACTION

By: Desi
(Representative)



DEPARTMENT: MARIPOSA PLANNING

BY: Eric Jay Toll

PHONE: 209-966-0302

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No___)

1. Approve a negative declaration.
2. Approve a motion to enact an ordinance amending Chapter 17.144 of the Mariposa County code, Enforcement, to change the penalty for enforcement from a misdemeanor to an infraction; identifying the zoning enforcement officer as the planning director; requiring Board approval of enforcement administrative procedures; and establishing a system for investigation, appeal, and resolution of enforcement matters.
3. Approve the Planning Director's Administrative Procedures

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Public hearing on June 5, 2001. Board closed the public hearing and continued deliberations to see the "clean" ordinance with amendments.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

<p>COSTS: (x) Not Applicable</p> <p>A. Budgeted current FY \$ _____</p> <p>B. Total anticipated costs \$ _____</p> <p>C. Required additional funding \$ _____</p> <p>D. Internal transfers \$ _____</p> <p>SOURCE: () 4/5th Vote Required</p> <p>A. Unanticipated revenues \$ _____</p> <p>B. Reserve for contingencies \$ _____</p> <p>C. Source description: _____</p> <p>Balance in Reserve for Contingencies, if approved: \$ _____</p>	<p>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>CLERK'S USE ONLY:</p> <p>Res. No.: <u>01-205</u> Ord. No. <u>967</u> / <u>mw</u></p> <p>Vote - Ayes: <u>4</u> Noes: _____</p> <p>Absent: <u>Pickard</u> Abstained: _____</p> <p><input checked="" type="checkbox"/> Approved () Denied</p> <p><input checked="" type="checkbox"/> Minute Order Attached () No Action Necessary</p> <p>The foregoing instrument is a correct copy of the original on file in this office. Date: _____</p> <p>ATTEST: MARGIE WILLIAMS, Clerk of the Board County of Mariposa, State of California</p> <p>By: _____ Deputy</p>	<p>ADMINISTRATIVE OFFICER'S RECOMMENDATION: This item on agenda as:</p> <p>_____ Recommended</p> <p>_____ Not Recommended</p> <p>_____ For Policy Determination</p> <p>_____ Submitted with Comment</p> <p>_____ Returned for Further Action</p> <p>Comment: _____</p> <p>_____</p> <p>A.O. Initials: _____</p>



COUNTY of MARIPOSA

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

DOUG BALMAIN, CHAIRMAN

ROBERT C. STEWART, VICE-CHAIRMAN

PATTI A. REILLY

GARRY R. PARKER

BOB PICKARD

DISTRICT II

DISTRICT III

DISTRICT I

DISTRICT IV

DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ERIC TOLL, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Ordinance Amending Chapter 17.144 of the Mariposa County Code
Ord. 967

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on July 10, 2001

ACTION AND VOTE:

2:02 p.m. Eric Toll, Planning Director;

PUBLIC HEARING (Deliberation Phase): Final Action by the Board to (1) Approve a Negative Declaration; (2) Adopt an Ordinance Amending Chapter 17.144 of the Mariposa County Code, Enforcement to Change the Penalty for Enforcement from a Misdemeanor to an Infraction; Identifying the Zoning Enforcement Officer as the Planning Director; Requiring Board Approval of Enforcement Administrative Procedures; and Establishing a System for Investigation, Appeal and Resolution of Enforcement Matters; and (3) Approve Planning Director's Administrative Guidelines (Continued from 6-19-01)

BOARD ACTION: Eric Toll advised of changes to clarify the language in the documents as requested during the previous discussion on this matter, and of the correction of typographical errors. It was noted that this is the deliberation phase of the hearing. (M)Reilly, (S)Stewart, Res. 01-205 adopted approving a Negative Declaration; Ordinance 967 was adopted amending Chapter 17.144, Enforcement, of the Mariposa County Code as recommended; and Administrative Guidelines were approved/Ayes: Reilly, Balmain, Stewart, Parker; Excused: Pickard. Hearing was closed.

cc: Jeff Green, County Counsel
Ordinance File
File