RESOLUTION - ACTION REQUESTED

MEETING: October 20, 2020

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: County Code Amendment for Code Compliance Process - Resolution

RECOMMENDATION AND JUSTIFICATION: Adopt a Resolution Approving County Code Amendment No. 2019-218 for Code Compliance Procedures with Findings Including a Finding that This Project is Exempt from Environmental Review and Directing Staff to File a Notice of Exemption.

This action is recommended based on limitations of the County’s current code compliance procedures. The County is pursuing code amendments to provide more effective, efficient and less costly administrative enforcement procedures.

See staff memorandum for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Resolution No. 2019-325 June 11, 2019: Board approved first amendment to agreement with Mintier Harnish Planning Consultants to include administrative enforcement procedures in County Code.

May 18, 2020: Item was scheduled and noticed for public hearing, but was withdrawn.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternatives: Amend text in new code.

Negative Action: Do not adopt resolution. Do not pursue ordinance amendments. Code compliance procedures in county would remain unchanged.

FINANCIAL IMPACT:

none

ATTACHMENTS:

1 201002 SR to BOS (DOCX)
2 200930 Code Compliance Case Summary (PDF)
3 201020 Draft Board Resolution for CCA 2019-218 (DOCX)
4 201020 Draft NOE (DOC)
5 MC_Title 1 Steps for AC (DOCX)
MEMORANDUM

Date: October 2, 2020

To: Board of Supervisors

From: Sarah Williams, Planning Director
       Mike Kinslow, Building Director
       Corrina Miranda, Code Compliance Technician

Re: County Code Amendment No. 2019-218 for Code Compliance Procedures

NOTE: This project, if approved, necessitates Board of Supervisors’ action on one resolution and four ordinances. This staff report is written for the following MT items:

MT 11058 – Resolution - Project
MT 11059 – Ordinance - Title 1 Amendments
MT 11060 – Ordinance - Title 3 Amendments
MT 11061 – Ordinance - Title 8 Amendments
MT 11062 – Ordinance - Title 17 Amendments

NOTE: This project does NOT include the International Property Maintenance Code (IPMC). The IPMC adoption was removed from this project by the Board of Supervisors.

Staff Recommendation

Staff recommends that the Board of Supervisors consider staff’s recommendations, the Planning Commission’s recommendation on the Title 17 portion of this project, and public input, and take the following actions:

1) Adopt a resolution, approving County Code Amendment No. 2019-218 for Code Compliance Procedures with findings, including a finding that this project is exempt from environmental review pursuant to the General Rule Exemptions, Section 15060(c)(2) and Section 15061(b)(3), CEQA Guidelines and pursuant to a Categorical Exemption, Section 15308; CEQA Guidelines, and directing staff to file a Notice of Exemption with the County Clerk.

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.
MT 11058

2) Waive the first reading and introduce an ordinance adding Chapter 1.40 Administrative Citations and Chapter 1.42 Abatement of Nuisances in Title 1 of County Code.

MT 11059

3) Waive the first reading and introduce an ordinance adding Sections 3.36.220 and 3.36.230 to Chapter 3.36 of Mariposa County Code.

MT 11060

4) Waive the first reading and introduce an ordinance amending Chapter 8.56 of Mariposa County Code Which Regulates Medicinal Marijuana Cultivation to Ensure Consistency with Chapters 1.40 and 1.42 of the Mariposa County Code.

MT 11061

5) Waive the first reading and introduce an ordinance adding Sections 17.144.110 and 17.144.120 to Chapter 17.144 of Mariposa County Code.

MT 11062

Project Description

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 a property owner to remedy a 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 allow 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 (when compliance may take significant time or if there are other unusual circumstances). The amendments include appeal rights, and the ability for a property owner to request a hardship waiver for advanced deposit fees for an appeal and a hardship waiver to reduce administrative fines.

Fees that are collected would be deposited into the county’s code compliance account to fund cleanups, compliance and abatement actions, and the cost of the code compliance program.

If fees are not paid, the fee can be made an abatement lien or special assessment against the property, for collection by the tax collector.

An administrative citation is not punishable by jail and does not appear on a criminal record.

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 a property owner, to abate a nuisance within 30 days. 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 abatement the nuisance, should the responsible party fail to do so.

The costs of abatement can be made an abatement lien or a special assessment against the property, for collection by the tax collector.

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 general fund contributions from county taxpayers and/or the county’s transient occupancy tax).

4) Internal consistency in county code (necessitating amendments to Chapter 3.36 for Transient Occupancy Tax, Chapter 8.56 for Medicinal Marijuana and Chapter 17.144 for Enforcement).

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 enter is denied, an inspection warrant shall be secured, except under exigent circumstances (an exigent circumstance is an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property or the environment).

8) Direction to staff to apply these new procedures to both new and existing code compliance cases.

9) Authority for staff to choose which alternative enforcement method or methods to use on any given case.

**Objectives of Board of Supervisors**

It is the responsibility of property owners to maintain their properties in compliance with applicable codes.

The Board establishes their **primary objectives** in pursing this project to be:

Objective ONE: to obtain code compliance

Objective TWO: to have the responsible party or property owner complete the requirements to obtain code compliance
The project provides the county with the ability to assess fines and fees when a property owner doesn't respond, which is intended to incentivize timely response by the responsible party or property owner.

The project provides the county with the ability to abate a nuisance, when a property owner doesn't respond. This a final, but not preferred, option to obtain code compliance.

**Need for Project**

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

- 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.
- 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.

As of September 30, 2020, compliance project tracking (since 1990) shows a total of 593 open cases. The tracking information shows that 45% of staff’s work on code compliance cases is not successful in obtaining compliance.

These cases include:

- Buildings/structures/additions built or remodeled without permits
- Theft of power and illegal electrical work
- Habitation without certificate of occupancy
- Illegal camping and illegal campgrounds, including homeless camps
- Illegal cultivation of marijuana, including illegal greenhouses
- Junkyards
- People living in recreational vehicles (RVs)
- Unpermitted vacation rentals and illegal advertisement of vacation rentals
- Sign violations
- Illegal/unpermitted grading
- Illegal mining operations
- Substandard housing
- Unsecured vacant building causing an attractive nuisance
- Other zoning ordinance violations
- Williamson Act Contract violations
- Failing septic disposal systems

Existing and unresolved code compliance cases can and do result in:

1. Negative impacts to off-site property owners and off-site property values,
2. Environmental hazards including water quality hazards,
3. Public health and safety hazards,
4. Unsafe buildings and unsafe grading,
5. Negative impacts to the County’s rural character and scenic quality,
6. Unfair business advantages, and
7. Increased wildland fire hazard risks.

When a code compliance case can be resolved as early as possible after it has been identified, it is typically easier and less costly to resolve for the property owner, it results in fewer impacts including off-site impacts, and the process takes less time for both staff and the property owner.

**Results of Project**

These code amendments will establish new and alternative procedures for pursuing compliance for violations of applicable county codes (most current code provisions establishing compliance requirements will not be eliminated).

The proposed new procedures will:

1. Promote and protect the public health, safety, and welfare of the citizens of Mariposa County;
2. Ensure compliance in a more timely and efficient manner;
3. Fully conform with due process and provide those cited with the right to an appeal hearing and an ability to request hardship waivers;
4. Provide a method to hold parties accountable when they fail or refuse to comply with the provisions of the applicable code(s);
5. Reduce the burden on the judicial system; and
6. Remove conditions of property declared to be a nuisance.

These procedures are routinely and successfully used throughout California.

**Background**

The county has two permanent code compliance staff, who review and process compliance cases for the Planning and Building Departments. The Health and Human Services Environmental Health Unit typically processes its own compliance cases.

Requests for Investigation may be submitted for code compliance review by the public. Additionally, county staff routinely identify violations during the normal course of business.

During the past year, code compliance for the Planning and Building departments received an average of 7 requests for investigation (new cases) per week.

The current code requires a multi-step process for code compliance staff, including requests for inspection, notices of intent, notices of violation, and appeal rights to both the Planning Commission and Board of Supervisors. If a property owner doesn’t voluntarily comply with staff’s requests throughout this process, the case must be forwarded to county counsel’s office to pursue action at the Superior Court to compel compliance (which could include a court
order for injunctive relief, the court to hold property owner in contempt, possible fines or jail time, recordation of judgment, and possible receivership).

**Amended Appeal Timeframe**

Both Chapters 1.40 and 1.42 include appeals procedures, which establish a fifteen (15) day time frame for appeals. This is five (5) days shorter than the current appeals procedures established by Title 17. Staff proposes a shorter time frame in response to the current desire of the Board to reduce processing time frames. If the Board supports this shorter appeal time frame, the future comprehensive amendments to Development Code will reflect this as well.

**Result of Recommendation**

If the recommended actions are taken:

1. The resolution will be executed (to be effective on the effective dates of the four ordinances).
2. The four ordinances will be introduced.
3. The four ordinances will be scheduled for waiver of the second reading and adoption three weeks following the waiver of the first reading and introduction (there isn’t a Board meeting two weeks following the waiver of the first reading and introduction).
4. The four ordinances would be effective 30 days following the adoption.

Once the ordinances are effective, code compliance staff would have the option of using the new procedures or the existing procedures when responding to an alleged violation.
<table>
<thead>
<tr>
<th>Primary Violation 1</th>
<th>Secondary Violation 2</th>
<th>Tertiary Violation 3</th>
<th>Total</th>
<th>Open</th>
<th>Closed</th>
<th>Unfounded</th>
<th>Duplicate</th>
<th>Case Type</th>
<th>Description</th>
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<td>0</td>
<td>Attractive Nuisance</td>
<td>Buildings or other items, debris, etc. that present a nuisance by being attractive to children, animals, homeless, etc.</td>
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<td>1</td>
<td>594</td>
<td>234</td>
<td>274</td>
<td>74</td>
<td>11</td>
<td>BWOP</td>
<td>Built without permit</td>
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<tr>
<td>0</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Power Theft</td>
<td>Theft of power - bypass meter</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Fire Damage</td>
<td>Debris, partially constructed structures, etc. that require proper disposal and testing to ensure they are not a threat to the occupant’s, environment or neighbors</td>
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<td>7</td>
<td>2</td>
<td>0</td>
<td>9</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>Grading</td>
<td>Grading done without permits</td>
</tr>
<tr>
<td>3</td>
<td>18</td>
<td>2</td>
<td>23</td>
<td>20</td>
<td>3</td>
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<td>0</td>
<td>Greenhouse(s)</td>
<td>Unpermitted commercial greenhouses used for the cultivation of marijuana</td>
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<td>1</td>
<td>11</td>
<td>8</td>
<td>3</td>
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<td>0</td>
<td>HipCamp</td>
<td>Illegal campgrounds</td>
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<td>8</td>
<td>65</td>
<td>51</td>
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<td>Junk</td>
<td>Junk including debris, cars, etc.</td>
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<td>120</td>
<td>62</td>
<td>56</td>
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<td>Marijuana</td>
<td>Cultivation of marijuana in excess of allowed amounts, not in compliance with standards</td>
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<td>58</td>
<td>96</td>
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<td>No Cert</td>
<td>Structures that started the permitting process however have never received a certificate of completion and/or occupancy. Permit has expired and/or people living in unit</td>
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<td>Non-specific category</td>
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<td>5</td>
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<td>RV</td>
<td>People living in recreational vehicles</td>
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<td>2</td>
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<td>40</td>
<td>6</td>
<td>32</td>
<td>1</td>
<td>1</td>
<td>Signs</td>
<td>Signs that do not comply with zoning due to lack of proper design review, temporary signs and banners, etc.</td>
</tr>
<tr>
<td>19</td>
<td>6</td>
<td>1</td>
<td>26</td>
<td>17</td>
<td>7</td>
<td>2</td>
<td>0</td>
<td>Substandard Housing</td>
<td>Housing that does not meet the minimum requirements set by local, state and federal building and housing requirements.</td>
</tr>
<tr>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>TOT Advertising</td>
<td>Vacation rentals advertising over occupancy or room count.</td>
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<td>0</td>
<td>30</td>
<td>23</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>TOT W/O Cert</td>
<td>Vacation rentals operating without permits</td>
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<td>2</td>
<td>2</td>
<td>2</td>
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<td>0</td>
<td>0</td>
<td>Unsafe Structure</td>
<td>Structures deemed unsafe due to construction or other factors.</td>
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<td>2</td>
<td>180</td>
<td>38</td>
<td>108</td>
<td>29</td>
<td>5</td>
<td>Zoning</td>
<td>Zoning violations include but not limited to design review, set backs, land use, etc.</td>
</tr>
</tbody>
</table>

**Totals**: 1448 | 593 | 702 | 124 | 27

As of September 30, 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 abatement 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 enter 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-___, recommending that the Board of Supervisors _______ the Title 17 portion of County Code Amendment No. 2019-218; 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 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
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.


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


“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. 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);

B. 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).
C. 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 which involve the commercial cultivation of marijuana, and/or any cultivation of marijuana for personal use where the number of plants exceeds those limits set by applicable codes. The administrative fine for this type of cited violation shall be immediately imposed pursuant to Government Code section 53069.4(a)(2)(B).

D. 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 contractors, 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 that 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.
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.

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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

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

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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.

Version 10/2/2020
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 Section1.42.120.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 supervisors may, by resolution, order that the total costs of abatement in compliance with this chapter be secured by a nuisance abatement lien and/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 and/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 entitlement 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 strikethrough 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 Premises 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...
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 promote the health, safety, morals, 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.
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 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 these 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.

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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 delegatee, 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 delegatee, 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 designee, 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.

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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 Procedure 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 take 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

____________________________________________       __________________
Sarah Williams                                      Date
Planning Director
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)
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
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
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
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