



TRINITY COUNTY

Board of Supervisors

P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
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MEMORANDUM

TO: Members of the Board
County Department Heads
Trinity Journal

FROM: Wendy Tyler

SUBJECT: Revised Proposed Nuisance Abatement Ordinance

DATE: November 13, 2009

Attached is the revised proposed Nuisance Abatement Ordinance which will be considered at the Board's special meeting on Monday, November 30, 2009. The meeting will be held at the Veteran's Memorial hall starting at 7:00 p.m.

The proposed Ordinance is also available on the County website.

TRINITY COUNTY

OFFICE OF THE COUNTY COUNSEL

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STAFF REPORT

To: Board of Supervisors
From: Derek Cole
Agenda: November 30, 2009 (Special Meeting)
Description: Proposed Ordinance Adding Chapter 8.90 of the Trinity County Code Pertaining to Public Nuisances

ISSUE: Should the Board of Supervisors adopt an ordinance allowing for assessment of civil fines and penalties for violations of the County Code.

BACKGROUND: This ordinance was presented for Board consideration on October 20, 2009. Based on concerns raised by a number of members of the public and Board members, a number of revisions have been made to the ordinance, as summarized below in the section entitled "Revisions."

PROPOSED ORDINANCE: The proposed ordinance implements a fine and penalty system for enforcing the County Code per Government Code section 53096.4. The ordinance would do the following:

- *Declare any violation of the County Code as subject to its provisions.*
- *Authorize fines and penalties to be imposed by the Director of certain departments.* These include the Sheriff, Planning, Building & Development Department, Health and Human Services Department, Agriculture Department, Solid Waste, and Treasurer/Tax Collector.
- *Set forth factors for the Director to determine the amount of the fine, which generally may be imposed at an amount up to \$100 per day the violation persists*
- *Establish the procedures for ensuring the party against whom fines or penalties are assessed receives notice of a code violation.*

- *Create an appeal procedure for determinations as to fines and penalties.* This would require the use of an independent hearing officer initially, and if the aggrieved party wishes to appeal further, he or she would have an additional appeal to the Board of Supervisors.

REVISIONS: The current version of the proposed ordinance makes the following revisions:

- Clarifies that the Director of Transportation is a “Director” vested with enforcement rights under the ordinance.

- Clarifies the inspection provisions of the ordinance to ensure that no inspection of private property may occur unless (i) the owner consents to the inspection, or (ii) a lawful search warrant is obtained.

- Adds new language requiring any “Director” to ascertain whether code violations are being carried on by the property owner or others such as lessees. In the latter situation, the ordinance would require the Director to contact the property owner and give the owner a reasonable time and opportunity to cure the violations. The Director would not be allowed to proceed with action under the ordinance unless such a reasonable cure period has been provided or, after the exercise of diligence, the property owner can not be found.

- Adds time to mailed notice periods, requires service of mail by registered mail, and requires a hearing enforcement officer’s written decision is not presumed to be served until five working days have passed. These changes were made to ensure that parties receiving decisions and notices received adequate time periods in which to receive and respond to documents they receive.

RECOMMENDATION: County Counsel recommends that the Board of Supervisors waive reading of this ordinance, introduce the ordinance, and hold a public hearing concerning its adoption. County Counsel further recommends that the Boar adopt the ordinance, as amended, as it will give the County additional code enforcement alternatives that are specifically authorized by law.

ORDINANCE NO. _____
ADDING CHAPTER 8.90 OF THE TRINITY COUNTY CODE

The Board of Supervisors of the County of Trinity, State of California, ordains as follows:

SECTION I: That Chapter 8.90 of the County Code be added by inserting the following:

8.9.010 Purpose and Intent. The Board of Supervisors finds that there is a need for an alternative method to enforce provisions of this Code, as amended from time to time. The Board further finds that the assessment of civil fines and penalties through an administrative hearing procedure for code violations in accordance with Government Code section 53069.4 is a necessary, alternative method of code enforcement.

8.9.020 Non-exclusive Remedy. The enforcement remedy of administrative assessment of civil fines and penalties established in this Chapter shall be in addition to any other administrative or judicial remedy provided by law.

8.9.030 Definitions. A. "Director" means the Trinity County Sheriff, Director of the County Transportation Department, Director of the Trinity County Planning Department, the Director of the Trinity County Building & Development Services Department, the Director of the Trinity County Health and Human Services Department, the Director of the Trinity County Agriculture Department, the Director of the Trinity County Solid Waste Department, or the Trinity County Treasurer/Tax Collector, or their designees.

B. "Property Owner" means the owner of record of the property upon which a violation of this Code exists as shown on the last equalized tax roll, the occupant of that property, and any other interested party responsible for such property or the violation.

C. "Notice of Violation" means the "Notice of Violation, Order to Correct and Notice of Assessment of Civil Fines and Penalties" issued by the Director in compliance with the Chapter.

8.9.40 Civil Fines and Penalties. A. Any person violating any provision of this Code, as amended from time to time, shall be subject to the assessment of civil fines and penalties pursuant to the administrative procedures established in this Chapter and authorized by Government Code section 53069.4

B. Each and every day a violation of this Code exists constitutes a separate and distinct violation.

8.9.50 Authority of Director. A. The Director shall have the authority and powers necessary to determine whether a violation of this Code exists and the authority to take appropriate action to gain compliance with the provisions of this Code. These powers include the power to issue Notices of Violation; the power to assess and

collect civil fines and penalties as provided in this Chapter; and the power to enter and inspect public and private property.

B. The Director is authorized to enter upon any property or premises to ascertain whether there are violations of this Code, and to make any examinations and surveys as may be necessary in the performance of his or her duties. If the property owner or other responsible person refuses permission to enter or inspect, the Director may seek an administrative inspection warrant pursuant to the California Code of Civil Procedure. Following the obtaining of owner permission to inspect or a lawful inspection warrant, the Director is authorized to conduct examinations and surveys that may include, but are not limited to, the taking of photographs or video recordings and the taking of samples or other physical evidence or recordings. All inspections, entries, examinations and surveys shall be done in a reasonable manner and shall at all times comply with constitutional and statutory requirements.

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Deleted: If the property owner or other responsible person refuses permission to enter or inspect, the Director may seek an administrative inspection warrant pursuant to the California Code of Civil Procedure.

C. The Director is authorized to assess civil fines or penalties pursuant to this Chapter for any portion of this Code that the Director's department has the responsibility to enforce, whether wholly or partially, pursuant to this Code or other law. The Director may take such action in accordance with, or with the cooperation of, any other Department with jurisdiction or responsibility over the matter.

8.9.060 Violations of this Chapter. Any person who violates any provisions of this Code, as amended from time to time, or any person who owns property upon which a violation exists, irrespective of whether that person caused the violation, shall be subject to an administrative fine or penalty up to the maximum amounts set forth in this Chapter.

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Prior to commencing any action under this Chapter, the Director shall attempt to ascertain whether the violation of the County Code are being carried on substantially or exclusively by individuals who rent, lease, or otherwise have no ownership interest on the property on which the violation is occurring. If the Director determines that the violation is being caused by a renter, lessor, or other person who has no ownership interest in the property, the Director shall not commence proceedings under this Chapter until the Director has attempted to contact the owner of the property and has provided the owner a reasonable period of time and opportunity in which to cure the violation or cause the violation to be cured. If the owner of the property does not respond within a reasonable time, or the owner cannot be found following the exercise of reasonable diligence to locate the owner, the Director may thereafter commencing proceedings pursuant to this Chapter.

8.9.070 Infractions. If this Code designates the violation as an infraction, the Director may impose as the administrative fine up to the maximum fine or penalty amounts for infractions set forth in subdivision (b) of California Government Code section 25132; the Director may impose the fine if the violation is not abated by the date specified in the Notice of Violation.

8.9.080 Violations Other than Infractions. If this Code does not designate the violation as an infraction, the Director may impose an administrative fine within the amounts set forth below:

A. If the violation arises from an unlawful commercial, industrial, rental (residential or non-residential), owner-occupied residential or similar use or structure on the property, the Director, in his or her discretion, may impose a fine in one of the following sums:

- (1) One hundred dollars (\$100.00) from the date of transmittal of the Notice of Violation, and up to one hundred dollars (\$100.00) for each calendar day thereafter that the violation exists on the property through the effective date of the Notice of Violation; or
- (2) In the event that the use of a structure in violation may be permitted with an appropriate permit, up to a maximum of five times the amount of the standard fee for such a permit.

B. For any other violation, the Director in his or her discretion may impose a fine in one of the following amounts:

- (1) One hundred dollars (\$100.00) from the date of transmittal of the Notice of Violation, and up to one hundred dollars (\$100.00) for each calendar day thereafter that the violation exists on the property through the effective date of the Notice of Violation; or
- (2) In the event that the use of a structure in violation may be permitted with an appropriate permit, up to a maximum of five times the amount of the standard fee for such a permit.

8.9.100 Accrual of Interest. Any administrative fine and penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 20th day after the penalty becomes a final decision or order.

8.9.110 Setting of Fines.

A. The Director shall determine fines in the first instance. In making the determination, the Director may take into account the facts and circumstances of the violation, including without limitation:

- (1) The length of time violations existed;
- (2) The culpability of the owner and the willfulness of the violation;
- (3) The number of previous violations of the same or related type committed by the owner within the preceding 36 months;

- (4) The extent of the violation and the effect of the violation on neighboring properties;
- (5) Attempts, if any, to comply with the applicable ordinances;
- (6) The time necessary to abate the violation; and
- (7) Any other information relevant to a determination of the fine.

B. In making a determination of the fine, the Director may consider any information submitted by the property owner. In the event that the Director determines that the violation was not caused by, or with the knowledge of, the current owner, the Director may reduce or eliminate the fine. In the event the Director determines that the correction of the violation is not feasible, and the violation does not present a threat to public health or safety, the Director may reduce or eliminate the fine.

8.9.120 Notice of Violation. Upon determining that a violation of any provision of this Code exists, the Director may take the following steps:

A. Issue a "Notice of Violation, Order to Correct, and Notice of Assessment of Civil Fines and Penalties," hereinafter referred to as "Notice of Violation," to the property owner by certified mail or by personal service by the Director or a peace officer. The Notice of Violation shall specify or contain:

- (1) The name and address of the property owner, and the address and Assessor's Parcel Number (APN) of the property where the violation exists;
- (2) A statement that a determination has been made that a violation of this Code exists on the identified property and specifying the sections of this Code violated and the conditions constituting each and every violation;
- (3) A specified time period of not less than 30 days from receipt of the Notice of Violation within which the violation must be abated;
- (4) A statement advising the property owner that in the event the violation is not abated by the expiration of the time specified in the Notice of Violation, the property owner shall be subject to administrative fines and penalties under this Chapter and specifying the maximum amount of such fines and penalties;
- (5) A statement that the property owner may submit in writing to the Director any information relating to the determination of the existence of the violation or violations or the amount of the fine to be imposed;

- (6) A statement of the additional potential consequences that could occur if the violation continued after the expiration of the time specified in the Notice of Violation; including, but not limited to, criminal prosecution, civil injunction, administrative abatement, judicial abatement, revocation of permits, recordation of Notice of Violation, and withholding of future County permits.
- (7) A statement that the property owner affected by the Notice of Violation may, within (10) calendar days after delivery or service of the Notice of Violation, appeal in writing to the Director which issued the Notice of Violation findings, determinations and amount of potential fines and penalties set out in the Notice of Violation, pursuant to the procedures set out in section 8.9.130.
- (8) The Notice of Violation shall contain a statement that, if the owner fails to request an appeal of the determination of administrative fines set out in the Notice of Violation, the determination of fines in the Notice of Violation shall be final.

B. The director may, in his or her discretion, record a copy of the Notice of Determination of Fine with the County Recorder of Trinity County. In the event of such recordation and in the event that the Notice of Violation is subsequently modified, the Director shall record a Notice of Correction. Correction of the violation shall not excuse the owner's liability for costs incurred during the administrative abatement process. In the event that the Notice of Violation is eliminated through the appeal process or because the violations have been corrected, the Director shall record a Notice of Withdrawal of the Notice of Violation, or a Notice of Satisfaction and Compliance of the Notice of Violation.

C. If the Director determines that an effort is being made to correct the violation, he or she may grant an additional period of time for correction of the violation.

D. Unless the Notice of Violation is appealed as set out in section 8.9.130, the Notice of Violation shall constitute the final administrative order or decision of the local agency and the assessment of administrative fines and penalties shall become a final order or decision within the meaning of Government Code section 53069.4(b)(1) and (c).

8.9.130 Appeal to Hearing Officer.

A. Any person (the "appellant") upon whom a Notice of Violation is served may appeal the findings, determinations and/or amount of potential fines and penalties set out in the Notice of Violation pursuant to the procedures set forth in this section. The appellant must file a written appeal with the Director within ten working days of personal service or the date of mailing of the Notice of Violation. The written appeal shall contain:

- (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;

- (2) A brief statement of the material facts which the appellant claims support his or her contention that no administrative penalty should be imposed or that an administrative penalty of a difference amount is warranted; and
- (3) An address at which the appellant agrees notice of any additional proceeding or an order relating to imposition of the administrative penalty may be received by first class mail.

B. An appeal of a Notice of Violation shall be heard by an independent and neutral hearing officer. The hearing officer may include a retired judge; attorney with more than 10 years of experience practicing law, provided he or she has substantial experience in code enforcement matters; or hearing officer selected from, or recommended by, the California Office of Administrative Hearings. The County is authorized to enter into a contract with an individual, company, or firm to provide hearing officer(s) services, provided the individual, company, or firm adopts and follows adequate procedures for maintaining the neutrality and avoiding conflicts of interest.

C. The appeal hearing shall be set no sooner than twenty (20) calendar days and no later than forty-five (45) calendar days following receipt of the written appeal. Notice of the appeal hearing shall be mailed by registered mail at least twelve (12) calendar days before the date set for the hearing. Failure of the appellant to appear timely will cause the Notice of Violation and the assessment of administrative fines and penalties to become a final order or decision.

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D. In reviewing the Notice of Violation, the hearing officer shall consider the factors set forth in section 8.9.110 above, and shall uphold, withdraw or modify the Notice of Violation and fines and penalties specified by that Notice. The hearing officer shall serve a copy of his or her written decision on the appellant. The written decision shall also include or be accompanied by a description of the right to appeal the decision to the Board of Supervisors as provided in Section 8.9.140 of this Chapter. The hearing officer's decision shall be mailed by registered mail and shall be deemed served within five working days after the date it was mailed to the address provided by the appellant.

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E. The decision of the hearing officer shall constitute the administrative order or decision of the local agency within the meaning of Government Code section 53069.4(b)(1) and (c) and shall be final unless appealed to the Board of Supervisors as set out in section 8.9.140

8.9.140 Appeal to Board of Supervisors.

A. The person who appealed the Notice of Violation pursuant to section 8.9.130 may appeal the decision of the hearing officer to the Board of Supervisors.

B. An appeal to the Board of Supervisors shall specifically set forth the grounds of the appeal. The appeal shall be filed no later than 10 working days after service of the hearing officer's written decision.

Deleted: At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board.

C. The Clerk of the Board shall mail notice by registered mail to the appellant of the date and time that the Board will meet to hear the appeal, which date shall be not less than fifteen (15) calendar days after the date of the mailing notice.

D. At a time fixed by the Clerk of the Board, the Board shall meet to review the appeal. The appellant may appear and be heard on the matter. The Board may place reasonable limits on the duration of the appellant's presentation to the Board.

E. The Notice of Violation and the written decision of the hearing officer shall be admitted into evidence. The owner shall bear the burden of proving that the decision of the hearing officer should be repealed or modified.

F. Formal rules of evidence and civil procedure in judicial proceedings shall not govern the appeal pursuant to this section.

G. In reviewing the decision of the hearing officer, the Board shall consider the factors set forth in section 8.9.110 above, and shall uphold, repeal or modify any fines and penalties assessed by the hearing officer. The written decision shall also include or be accompanied by a description of the appellant's right to appeal the decision as provided in Government Code section 53069.4 and section 8.9.150.

H. The decision of the Board shall constitute the final administrative order or decision of the local agency within the meaning of Government Code section 53069.4(b)(1) and (c). The Clerk of the Board shall serve a copy of the Board's written decision on the appellant in the written notice of appeal. The Board's decision shall be deemed served within two days after the date it is mailed by the Clerk of the Board to the address provided by the appellant.

8.9.150 Appeal to Superior Court. Any person aggrieved by a final administrative order or decision imposing an administrative fine may seek review with the Trinity County Superior Court pursuant to Government Code Section 53069.4.

8.9.160 Collection of Fines and Penalties. When an administrative fine or penalty becomes a final order under this Section or Government Code section 53069.4, the County may proceed to collect the fine or penalty as follows:

A. The County may commence a civil action to enjoin and/or collect the administrative fines and penalties; in the event a civil action is commenced to collect the administrative fines and penalties, the County shall be entitled to recover all costs associated with the collection of the fines and penalties. Costs include, without limitation, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure section 1033.5.

B. The amount of any unpaid final administrative fine, plus interest, plus any other costs as provided in this Chapter, may be declared a lien on any real property owned by the property owner within the County against whom an administrative penalty has been imposed as follows:

- (1) Notice shall be given to the property owner before recordation of the lien, and shall be served in the same manner as a summons in the civil action pursuant to Code of Civil Procedure section 415.10 et seq.,
- (2) The lien shall attach when the County records it with the County Recorder's office. The lien shall specify the amount of the lien, the date of the code violations, the date of the final decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel; and
- (3) In the event that the lien is discharged, released, or satisfied, either through payment of foreclosure, the County shall record a notice of the discharge containing the information specified in subparagraph (b).

C. The County may withhold issuance of discretionary licenses, permits and other entitlements to the property owner on any project, property, or application of any kind whenever an administrative penalty remains unpaid.

D. The County may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 et. seq.

8.9.170 Appeal Fees Authorized. The Board of Supervisors is authorized to establish reasonable fees for the filing, processing, and handling of any appeal authorized by this Chapter. The Board of Supervisors shall comply with the requirements of Government Code section 54985 et seq. in establishing and annually updating the amounts of these fees.

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SECTION II: This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Trinity Journal, a newspaper of general circulation published in the County of Trinity State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 20th day of October 2009, ^{amended on the 30th day of November}, and passed and adopted by the Board of Supervisors of the County of Trinity State of California, on the ~~3~~ day of ~~December~~ 2009, by the following roll call vote, to-wit:

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AYES:
NOES:
ABSENT:
ABSTAINING:

WENDY REISS
Chairman of the Board of Supervisors
of the County of Trinity, State of California

ATTEST:

Wendy G. Tyler, Clerk of the Board of Supervisors
County of Trinity, State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

Derek Cole, County Counsel