



COUNTY OF HUMBOLDT

For the meeting of: 7/7/2020

File #: 20-779

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Departmental

SUBJECT:

Introduction of Ordinance Amending County Code relative to Code Enforcement Procedures to accomplish the following: Record Notice to Abate Nuisance and Notice of Violation on subject property, and Impose Immediate Administrative Civil Penalties consistent with Government Code Section 53069.4, and Clarify Judicial Review of the Hearing Officer's Order Imposing Administrative Civil Penalty

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce the proposed ordinance amending Section 351-6 of Chapter 1, Division 5, Title III, and Sections 352-3, 352-4, 352-5, 352-8 and 352-13 of Chapter 2, Division 5, Title III of Humboldt County Code (HCC) relating to public nuisances, abatement and penalties by title and waive the first reading;
2. Request that staff present the amendments;
3. Accept public comment;
4. Deliberate on the proposed ordinance;
5. Set the ordinance for adoption at least one week from this hearing date;
6. Direct the Clerk of the Board to publish a Summary for Publication prior to adoption of ordinance. The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted (Government Code section 25124(b)(1));
7. Direct the Clerk of the Board, within fifteen (15) days after adoption of the ordinance, to publish a post-adoption summary of the ordinance with the names of the Supervisors voting for and against the ordinance and to post in the office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance (Government Code section 25124(b)(1)); and
8. Direct staff to file the attached Notice of Exemption with the Humboldt County Clerk in accordance with the requirements of the California Environmental Quality Act.

SOURCE OF FUNDING:

General Fund

DISCUSSION:

The attached ordinance is intended to make the county's regulations consistent with state law and to provide better public notification when public nuisance and violations exist on the real property. The most controversial of the changes, is a state law provision that allows fines and penalties to begin to accrue at the time the Notice of Violation and Proposed Administrative Civil Penalties (Notice of Violation) is issued for cannabis related code violations. The other changes are intended to provide increased clarity to the code enforcement process.

Concerns have been expressed about real property transactions where the buyer does not have notice of the public nuisance and code violations that exists on the property. The most efficient way to address this is to record the Notice to Abate Nuisance and Notice of Violation in the County Clerk Recorder's Office. This will give constructive notice to any interested party of the Code Enforcement Notices against a property and to prevent public nuisances and code violations from being unknowingly passed onto new property owners. Potential lenders will also be aware of the Code Enforcement Notices upon title search activities. This is the change reflected in HCC section 351-6(c) and 352-4 of the attached ordinance.

The definition of a Category 4 Violation is amended to reflect that all code violations as a result of or to facilitate illegal cannabis violation are considered Category 4 Violations. Thus, grading, building code, and/or zoning ordinance violations committed in association with a cannabis violation would be addressed as a Category 4 violation as is the cannabis violation. This is not a change from practice, it is a clarification in the ordinance.

California Government Code section 53069.4 currently provides that administrative civil penalties may begin to accrue on the date of issuance of the Notice of Violation. California Department of Food and Agriculture (CDFA) has advocated for the County to implement this provision. An important tool in the County's Code Enforcement effort is allowing 10 days for people to come into compliance without accruing administrative civil penalties. The proposed ordinance has been written to be consistent with Section 53069.4. In cases where repeat, subsequent or ongoing code violations involving illegal cannabis cultivation, the administrative civil penalties shall commence on the date of the issuance of the Notice of Violation unless the following three specific conditions are proven: (1) a tenant is in possession of the property; (2) evidence that the rental or lease agreement prohibits the cultivation of cannabis; and (3) owner or its agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information would give actual notice of the illegal cannabis cultivation. If these three specific conditions have been proven, then the recipient of the Notice of Violation will be given a reasonable time not to exceed ten (10) days to correct the code violations.

This closes a loophole in circumstances where a property owner or its agent, tenant, or occupier receives the Notice of Violation and the individual corrects the violations and then later returns to restart illegally cultivating cannabis. Under the existing County Codes, the recipient of the Notice of Violation has ten (10) days to correct the identified code violations without any imposition of administrative civil penalty. This cycle could be repeated endlessly. The proposed amendment would

result in imposition of immediate administrative civil penalties for subsequent violations. This change is found in HCC sections 352-3 and 352-5 of the attached ordinance and would allow administrative civil penalties to begin to accrue upon the issuance of the Notice of Violation unless the three specified conditions have been proven by the property owner.

There were concerns raised that the proposed change would be particularly punitive to property owners where repeat illegal cannabis cultivations are allegedly the result of trespassers. While this situation is extremely rare, staff twice met with local attorney Eugene Denson and discussed his concerns. Statistically, actual and claimed trespass grows make up less than one percent of the total cannabis violation cases the Department has processed. The proposed change still provides property owners the same opportunity to work with staff to identify, address, and resolve such situations without imposition of administrative civil penalties.

The final amendment is to clarify the appropriate appeal processes to challenge a finding of Violation and Order Imposing Administrative Civil Penalty consistent with case law. This change is contained in HCC section 352-13 of the attached ordinance.

FINANCIAL IMPACT:

The cost associated with adoption of the ordinance is covered by the General Fund. The ability to immediately impose administrative civil penalties will provide General Fund reimbursement upon receipt of the penalties.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by creating opportunities for improved safety and health and enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the recording of the Notice to Abate Nuisance and Notice of Violation by Code Enforcement. This is not recommended because interested parties have no knowledge of code enforcement actions as public nuisance and code violations are identified. It is further not recommended to delay the imposition of administrative civil penalties because this postpones the recovery of costs associated with code enforcement actions.

ATTACHMENTS:

1. Notice of Exemption Regarding Code Enforcement Update Ordinance.
2. Code Enforcement Update Ordinance Pre-Adoption Summary.
3. Code Enforcement Update Ordinance Post-Adoption Summary.
4. Code Enforcement Update Ordinance with Code Amendments.

PREVIOUS ACTION/REFERRAL:

File #: 20-779

Board Order No.: N/A

Meeting of: 06/20/2017, 06/27/2017, 10/24/2017, 11/19/2019

File No.: 17-1964, 17-2062, 17-2511, 19-1601