



Legislation Text

File #: 2020-0684, **Version:** 2

To: Sonoma County Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Tyra Harrington, Code Enforcement Manager. (707) 565-1280

Vote Requirement: Majority

Supervisorial District(s): All

Title:

2:30 P.M. - Code Enforcement Amendments to Sonoma County Code Chapters 1 and 26

Recommended Action:

- A) Adopt a Resolution introducing, reading the title of, and waiving further reading of a proposed Ordinance amending Chapter 1 to consolidate enforcement provisions, establish new civil penalties, address environmental damage, align the violation correction period with state law, make other technical and clarifying changes, and amending related provisions of Cannabis Enforcement and Vacation Rental Enforcement, Chapter 26 (Zoning Code).
- B) Adopt a Resolution updating rules and procedures for administrative hearings presided over by a hearing officer.
- C) Adopt a Resolution broadening the authority of the Permit Sonoma Director and the County Counsel to directly file nuisance abatement litigation for egregious violations in lieu of following the administrative abatement process.

Executive Summary:

Permit Sonoma requests the Board approve amendments to Sonoma County Code as provided below.

- Simplify, clarify, and update administrative enforcement language in Chapter 1 related to administrative abatement, civil penalties, and civil abatement actions.
- Add an Environmental Restoration section to Chapter 1 as an additional enforcement tool to require remediation of violations that may cause or have caused significant environmental damage.
- Expand the definition of “violation” to include a proclamation or order, such as a public health order.
- Consolidate enforcement provisions into Chapter 1, including civil penalties for violations related to vacation rentals, cannabis, and VESCO (Vineyard and Orchard Erosion and Sediment Control Ordinance).
- Apply the civil penalties for VESCO (Chapter 36) to construction grading violations (Chapter 11).
- Align the correction period for violations with state law, which also clarifies that all zoning violations, including cannabis-related zoning violations, are immediately subject to civil penalties.
- Amend cannabis-related provisions to:
 - Add a “per plant” civil penalty option; and
 - Remove the three-strikes-penalty permit revocation provision to maintain prosecutorial discretion and proportionality.
- Amend Vacation Rental Ordinance sections to:

- Move civil penalties to Chapter 1; and
- Make other minor amendments to reference the Administrative Citation Ordinance (Sec. 1-7.6).

Permit Sonoma recommends updating the rules and procedures governing administrative hearings held by a hearing officer, such as appeal hearings. Administrative hearing procedures were last revised in 1988 and an update is required to meet the needs of more complicated and contentious administrative hearings, while still maintaining an accessible and informal process.

Permit Sonoma additionally recommends broadening the authority previously granted by the Board to the Permit Sonoma Director and the County Counsel to directly file litigation in lieu of using the administrative procedures in the county code in order to allow for more efficient and effective enforcement of egregious violations, such as those that involve a risk to health and safety, environmental damage, or repeat or flagrant violations.

Discussion:

Introduction

The Permit Sonoma Code Enforcement Division serves internal and external customers by providing a timely response to complaints and maintaining an effective and efficient enforcement process. This is particularly true with complaints relating to cannabis cultivation and vacation rentals. The Board of Supervisors has enacted policies in these specific areas with the expectation that these activities would be tightly regulated and proactively enforced, not by law enforcement, but as a land uses regulated by Chapter 26 using the abatement processes contained in Chapter 1. These regulations were created to ensure the safety of the public and protection of the environment within a consistent regulatory framework.

Enforcement and abatement actions have multiplied and become far more adversarial in the current environment. These contentious code enforcement cases, both at the administrative and judicial levels, highlight the need for clear and concise code language. On June 4, 2020, the Planning Commission considered changes to Sonoma County Code Chapter 26 and unanimously recommended them pursuant to Resolution Number 20-003.

Enforcement Data

Background

During 2010-2016, Code Enforcement received an annual average of 936 complaints. Starting in 2016, the added enforcement task of regulating vacation rentals took place. In January 2017, Code Enforcement began enforcement of cannabis land use regulations for both permitted and unpermitted cannabis cultivation operations. In 2018, enforcement duties were expanded to include storm water and encroachment violations. In 2020, Code Enforcement is participating in the enforcement of Chapter 13A for hazardous vegetation management and will soon be enforcing local and state public health orders. Per the Board's direction in December 2019, the Department of Agriculture/Weights and Measures (AWM) will provide primary land use enforcement for permitted cannabis operations. Code Enforcement will focus on enforcement against unpermitted cannabis operations and assist AWM with enforcement against permitted operations related to building, septic, and other structural violations.

In 2017, due to these increased enforcement tasks, the number of new complaints spiked to 1,611, an increase of 72%. That year, 469 (34%) of received complaints were cannabis-related. In 2018, 1,452 complaints were received of which 239 (16%) were for cannabis cultivation. Finally, in 2019, Code Enforcement experienced another increase in complaints to a record high of 1,954 with 18.5% specific to cannabis cultivation. This trend more than doubles the average annual number of complaints received compared to the years before 2017.

Simplify, Clarify, and Update Language

The primary goal of many of the proposed changes is to simplify and clarify Chapter 1's enforcement provisions as well as update them to reflect current enforcement needs and practices. Various sections and provisions have been added over the years as each was necessitated by enforcement efforts at the time. This approach has led to some duplication of and conflict among provisions. Staff recommends adding and consolidating definitions, remedies, and authority into Section 1-7 so that these provisions can be consistently referenced throughout the other enforcement sections and in other chapters. Staff also proposes consolidating all civil penalties in Section 1-7.1, which requires moving penalties for cannabis, vacation rentals, and agricultural grading (VESCO), so that all penalties are in one location and can be consistently imposed.

Clarifying amendments include, for example, defining "violation" that can be referenced throughout; defining "responsible party" and specifying that the property owner, tenant, and direct actor are jointly and severally liable for abatement and civil penalties; ensuring that the county may file a civil nuisance abatement action pursuant to any authority allowed under state law and seek any nuisance abatement remedies; and articulating that a notice and order that is not appealed becomes a final determination of the violation. Proposed amendments to update the code to reflect current needs and practices include, for example, establishing provisions for appeal hearings on civil penalties alone after the violation has been abated, and not limiting civil penalty provisions and administrative abatement procedures to violations of certain code sections.

Environmental Restoration

It is well established that damage to the environment and natural ecosystems can be significant and is often associated with unpermitted or improperly conducted human activities. Current practice requires abatement of these harms through the use of practices meant to mitigate against further damage. Installation of silt fences, straw bales, and other Best Management Practices are examples of methods used to address future environmental issues after the damage has already been done.

Code enforcement has witnessed firsthand the environmental damage that can be caused or potentially caused by people engaged in illegal and unpermitted activities. The most common includes sediment runoff into waterways caused by grading and hazardous electrical/use of large generators, at remote sites in high fire danger zones.

In addition to other remedies, staff proposes the addition of a new potential remedy to address those cases where substantial environmental damage has occurred and where restoration is possible to return impacted ecosystems to their natural state or an otherwise improved state. This code addition would be a valuable tool that recognizes the long-term and lasting effects of environmental degradation and goes beyond more immediate yet temporary remediation measures.

Expand Definition of “Violation”

The proposed ordinance includes a definition of “violation” that expands current language to more comprehensively include regulations adopted and issued by the County. Currently, a violation generally includes a violation of an ordinance, rule, or regulation, or the term of a permit, license, or approval. The proposed language also includes a proclamation or order of the County, which would enable administrative enforcement of public health orders related to COVID-19. While health and emergency orders are generally only enforced by law enforcement or civil action for nuisance abatement, this amendment to Chapter 1 means that administrative enforcement provisions, such as civil penalties, administrative abatement procedures, or administrative citations, could be used to enforce future health orders or other future emergency actions.

Civil Penalties for Grading - Chapters 11 and 36

Staff proposes amending Chapter 1 Section 1-7.1 (Civil Penalties) to add civil penalties that are currently codified in Chapter 36 (VESCO) and apply to violations related to vineyard, orchards, and agricultural grading. The amendment would also make these penalties applicable to violations of Chapter 11 (Construction Grading), which are generally very similar in nature and potential impact as agricultural grading. Currently, violations of Chapters 11 are only subject to civil penalties of up to \$100 per day from the date Code Enforcement issues a Notice and Order. This means penalties are more dependent on how long it takes someone to remedy the violation after it is detected by Code Enforcement instead of the severity of the environmental impact and other relevant factors.

The changes being proposed to Chapter 1 would allow the enforcing officer to calculate penalties based on the severity of the violations and associated impacts on property, public health and safety, and the environment, which can be extreme. These proposed penalties range from \$50 up to \$100,000 and will allow the penalty to be applied proportionally to the seriousness of the resulting adverse effects and environmental damage.

Correction Period - When Civil Penalties Are Imposed

Under Section 1-7.1, the county code currently provides relief from civil penalties under a few different circumstances. Subsection (d)(2) provides that civil penalties “shall not apply” when a property owner remedies a first violation within 30 days of receiving a notice of violation. The Cannabis Ordinance imposes different civil penalties for cannabis-related violations and states that cannabis civil penalties “may not apply” if the violation is removed within 5 days. (Section 26-88-252(d)(5).) The intent was to incentivize violators to act quickly and provide code enforcement discretion to not impose penalties when appropriate. However, this provision has been occasionally misinterpreted to mandate a 5-day cure period prior to civil penalties being imposed.

Staff recommends removing this provision and aligning Section 1-7.1 with state law. Cal. Gov. Code Section 53069.4 requires a reasonable correction period for violations pertaining to “building, plumbing, electrical, or other similar structural or zoning issues.” In other words, state law does not provide a correction period for many types of violations, such as zoning violations. Instead, state law only requires correction periods for violations like building code violations for which abatement requires obtaining a permit, doing construction, and other activities that take time. It is important that the county have the express authority to apply civil penalties immediately for other types of violations because cannabis uses, vacation rentals, and other zoning violations can be moved, started, and stopped so quickly that violators could always evade civil penalties, and thereby undermine the efficacy of code enforcement on unpermitted activity.

The Government Code was recently amended to specifically address cannabis-related violations. Those amendments provided that building, plumbing, and electrical violations related to cannabis were immediately subject to civil penalties, unless the responsible party was an unknowing property owner. Staff recommends mirroring state statute so that civil penalties could be immediately imposed on growers for those violations, but that unknowing property owners would be exempt from those penalties if they demolished the structural violations within 30 days. An alternative option is to not mirror state law on cannabis-related violations and instead allow the same correction period for all structural violations regardless of the underlying land use. This would reduce the effectiveness of enforcement against unpermitted cannabis, but would make the code simpler to understand and implement and treat unpermitted uses the same.

Cannabis-specific Enforcement Changes

Per Plant Civil Penalty

Currently, civil penalty calculations are made using the Cannabis Civil Penalty Schedule found in Sonoma County Code Section 26-88-250(d)(3). This schedule provides a variety of options for calculating penalties, each with a maximum penalty amount. These civil penalties are based on the number of days a grow remains from the date the notice and order is issued until the violation is abated. Staff has found that this is generally less relevant to the severity of the violation and does not account for the extreme profitability potential from very large cultivation sites. Staff proposes adding a per plant fine to allow Code Enforcement staff to apply a more proportional disincentive for starting or continuing cannabis cultivation.

A “per plant” method has been adopted by other jurisdictions. Stanislaus and Sacramento Counties, as well as the Cities of Malibu and Redding, have adopted a maximum \$1,000 per plant per day penalty. Placer and the City of Malibu have also adopted a \$1,000 per plant penalty, but it is not expressly applied daily. Fresno County adopted a \$1,000 per plant penalty plus a \$100 per plant per day penalty if a violation remains after an abatement deadline. Civil penalties are effective when the fines create a financial downside risk that exceeds the profitability potential for illegal activity. The per plant fee schedules from the counties and cities cited above were adopted to recognize the extreme profitability of cannabis cultivation. The per plant penalty provides an important tool to deter both new and repeat violations.

Staff further recommends allowing 5 days after the initial civil penalty prior to imposing additional civil penalties because even large grows can be eradicated in this time period. While the initial penalty is intended to dissuade beginning unpermitted activity in the first place, the additional daily penalty should incentivize swift abatement of the unpermitted activity.

Three Strikes Penalty

The Cannabis Land Use Ordinance currently provides that a land use permit for commercial cannabis activities is revoked once there have been three violations of operational conditions by the same owner or operator at any of their properties (Sec. 26-88-252(d)(4)). Staff proposes removing this provision for several reasons. First, the County has the authority under Sec. 26-88-252(c) to revoke a cannabis permit for non-compliance with the county code or a permit condition. Second, the language removes discretion from the County so that permit revocation may be required when the three violations are minor and thus not proportionate to the penalty. Lastly, the provision could require permit revocation based on violations that occurred at a different cannabis site, even though the other operation may be run by a different business with different investors, simply because they share one common owner. Cannabis permits require extensive work by the applicant and review by the County. Given this, staff recommends that it is more appropriate for the County to employ discretion in

revoking permits when, for example, there are extreme violations, repeated offenses, or when the County is unable to obtain compliance through enforcement or permit modification.

Technical Changes to Vacation Rental Ordinance Enforcement Section

Staff proposes to move civil penalties for vacation rentals to Chapter 1 to be consistent with other civil penalties. Additionally, minor amendments referencing the Administrative Citation Ordinance (Section 1-7.6), which has been adopted since the Vacation Rental Ordinance, clarify the administrative procedures that govern administrative citations for vacation rental violations. By consolidating more enforcement provisions in Chapter 1, the opportunities for conflicting language and ambiguity is reduced.

Administrative Abatement Procedures

Staff proposes an update to the 1998 Resolution governing the conduct of administrative abatement hearings currently found in Chapter 1 Section 1-7.3. The intent of these changes is to maintain the informal and flexible nature of these quasi-judicial hearings that take place outside a formal courtroom setting. This less stringent approach benefits property owners and others unfamiliar with legal procedures and who do not have counsel. At the same time, administrative hearings have become more contentious with increased civil enforcement of high-value unpermitted land uses, such as cannabis uses, which necessitates clearer rules for procedures and tools that were previously seldom used like subpoenas, continuances, and site visits. These proposed changes provide better procedural structure and clarity to ensure public abatement hearings run in an organized manner and that due process obligations are met. Additionally, potential applicability of the rules and procedures have been broadened so that other departments may choose to employ them for their appeal and due process hearings, such as the Tax Collector's Office.

Authority to Directly File Judicial Action

Permit Sonoma enforces against a wide variety of violations. In most cases, the Department works with the property owner through the administrative abatement process outlined in Section 1-7.3 to correct the violation and bring the property into compliance. However, in the case of egregious violations Permit Sonoma and the County Counsel's Office have found that directly filing litigation is a more effective and efficient way of achieving compliance. These egregious cases are often characterized by risks to health and safety, environmental damage, or repeat or flagrant violations. The usual process for these egregious violations has been to request authority from the Board to file a civil action on a case by case basis. On March 7, 2017, the Board granted the Permit Sonoma Director and the County Counsel the authority to directly file litigation for high risk violations that posed an immediate and significant health and safety risk and then seek ratification from the Board at the earliest possible opportunity. Given the time and process of seeking individual authorization from the Board, the departments now seek broader authority to file litigation to abate egregious violations. The department would then return to the Board regularly for review of these cases.

Prior Board Actions:

October 16, 2018: Final adoption of Phase 1 of the updates to the Cannabis Land Use Ordinance

July 24, 2018 Ordinance 6236 - Administrative Citations and Chapter 1 amendments

December 20, 2016: Final adoption of Cannabis Land Use Ordinance

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

Not applicable.

Narrative Explanation of Staffing Impacts (If Required):

Not applicable.

Attachments:

- ATT 1: Resolution introducing, reading the title of, and waiving further reading of a proposed Ordinance amending Chapters 1 (General Provisions) and Chapter 26 (Zoning Code)
- ATT 2: Draft Ordinance amending Chapters 1 (General Provisions) and Chapter 26 (Zoning Code)
- ATT 3: Ex. A: Draft Chapter 1 Amendments
- ATT 4: Ex. B: Draft Cannabis (Sec. 26-88-252) Amendments
- ATT 5: Ex. C: Draft Vacation Rental (Sec. 26-88-120) Amendments
- ATT 6: Resolution Amending and Establishing Rules and Procedures for Administrative Hearings
- ATT 7: Ex. A: Rules and Procedures for Administrative Hearings
- ATT 8: Resolution Granting the Permit Sonoma Director and the County Counsel Authority to File Litigation to Abate a Public Nuisance
- ATT 9: Planning Commission Resolution Number 20-003

Related Items "On File" with the Clerk of the Board:

None