

County Contract No.

Department
County Counsel

TRINITY COUNTY
Board Item Request Form
2011-06-07

7.03

Contact
Derek Cole

Phone
623-1382

Requested Agenda Location
County Matters

Requested Board Action:

Waive reading and direct the Clerk to let the record show that an Ordinance adding Chapter 8.90 to the Trinity County Code, pertaining to Code Enforcement in introduced

Fiscal Impact:

None for introduction of the ordinance

Motion:_____ Second_____ Roll Call: Ayes:_____ Nays:_____ Tabled To:_____

Action:

Notes:

TRINITY COUNTY

OFFICE OF THE COUNTY COUNSEL

DEREK P. COLE, COUNTY COUNSEL
P.O. Box 1428, Weaverville, California 96093-1428
Phone: (530) 623-1382 Fax (530) 623-8365



STAFF REPORT

To: Board of Supervisors
From: Derek Cole
Agenda: June 7, 2011
Description: Proposed Ordinance Adding Chapter 8.90 of the Trinity County Code Pertaining to Code Enforcement

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

BACKGROUND: A prior version of the attached ordinance was first presented for Board consideration on October 20, 2009. Following revisions based on concerns raised at this first meeting, the ordinance was further revised and again considered by the Board on November 30, 2009. Based on additional concerns raised at this meeting, several revisions were made to the ordinance, which were then heard at the Board's February 2, 2010 hearing. At the February 2 hearing, the Board introduced the ordinance and waived its first reading. The Board did not request any additional substantive changes. However, when the Board considered the second reading of the ordinance on February 16, 2010, it did not take further action.

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, Agriculture Department, and Solid Waste Department.*
- *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.*

HISTORY OF PREVIOUS REVISIONS: As the previous ordinance was the subject of a number of hearings, several revisions were made to the original proposal, which are incorporated in the present draft. Among the changes that have been made are the following:

- Clarification 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.

- Addition of 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 against the owner 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.

- Addition of time to mailed notice periods, requirement of service of mail by registered mail, and clarification that 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.

FURTHER REVISIONS: In addition, the current version of the ordinance makes the following revisions to the last draft of the ordinance the Board considered:

- *Elimination of the Appeal to the Board of Supervisors.* The present draft allows an appeal to a neutral hearing officer; any further appeal would proceed in Trinity Superior Court.

- The present draft makes several technical changes, particularly associated with cross-referencing within the Chapter.

RECOMMENDATION: County Counsel recommends that the Board of Supervisors introduce the attached ordinance and waive its first reading. County Counsel further recommends that the Board adopt the ordinance 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:

8.90.010 Purpose and Intent. It is the intent of the Board of Supervisors in enacting this chapter to ensure compliance with this Code and to deter violations of this Code. The Board of Supervisors also 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.

8.90.020 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.

8.90.030 Definitions. A. "Director" means the Sheriff, Director of the Transportation Department, the Director of the Planning Department, the Director of the Building & Development Services Department, the Director of the Agriculture Department, the Director of the Solid Waste Department, or the designee of any of the foregoing department heads. The County may designate employees as code enforcement officers, whether part time or full time, and if so designated, such employees shall possess all the powers and authority of a Director, as provided in this Chapter.

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.

8.90.40 Civil Fines and Penalties. A. Any person violating any provision of this Code, as amended from time to time, may 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.

8.90.50 Authority of Director. A. The Director shall take action pursuant to this Chapter only to secure compliance with this Code and to ensure deterrence against violations of this Code. Consistent with these exclusive purposes for this Chapter, 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 as permitted by law.

B. Consistent with the purposes for this Chapter as set forth in the preceding paragraph, 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 or as otherwise authorized by law. 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.

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.

8.90.060 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.

Prior to commencing any action under this Chapter, the Director shall attempt to ascertain whether the violation of the County Code is 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 against the property owner until the Director has attempted to contact the owner 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 commence proceedings pursuant to this Chapter against the owner.

8.90.070 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.

8.90.080 Violations Other than Infractions. For any violation of the County Code, 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 structure on the property, the Director, in his or her discretion, may impose a fine in one of the following sums:

- (1) The fair market rental value of the land or structure in violation for the period of time elapsed from the date of transmittal of the Notice of Violation through to the abatement of the violation by whatever means;
- (2) Up to 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
- (3) 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 up to 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.

C. Although this section authorizes fines to be imposed in amounts up to \$100 per day of violation, the Director shall not automatically impose fines up to such amount for each day a violation exists. It is the intent of the Board of Supervisors in enacting this Chapter that fines for violations of this Code be set at amounts no higher than that which are sufficient to secure compliance with this Code and to deter individuals and entities from violating this Code. When setting the amount of the fine under either Paragraph (A) or (B) of this Section, the Director shall be strictly guided only by the factors set forth in Section 8.90.110. In no event shall the Director impose a fine that is excessive in light of the nature and scope of the violation or that is intended to achieve some purpose other than securing compliance with this Code or achieving deterrence.

8.90.100 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.

8.90.110 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 violator and the willfulness of the violation;
- (3) The number of previous violations of the same or related type committed by the violator 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; and
- (6) The time necessary to abate the violation.

B. In making a determination of the fine, the Director may consider any information submitted by the property owner, tenant, lessor, and/or other occupant of the property. In the event that the Director determines that the violation was not caused by, or with the knowledge of, the current owner, tenant, lessor, and/or occupant 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.

8.90.120 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, tenant, lessor, and/or occupant of the property 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, tenant, lessor, and/or occupant 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, tenant, lessor, and/or occupant that in the event the violation is not abated by the expiration of the time specified in the Notice of Violation, the property owner, tenant, lessor, and/or occupant 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, tenant, lessor, and/or occupant 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, tenant, lessor, and/or occupant 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 8.90.130.
- (8) The Notice of Violation shall contain a statement that, if the owner, tenant, lessor, and/or occupant 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 within the time limit and manner set forth in section 8.90.130, 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).

8.90.130 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. The written appeal must be accompanied by payment of any fee the Board of Supervisors establishes under section 8.90.160, or a request for exemption provided for in section 8.90.170. Failure to comply with the requirements of this paragraph within the 10 days for filing an appeal set forth in Paragraph (A) of this section shall constitute a waiver of the right to appeal.

C. 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 five years of experience practicing law, provided he or she has experience in code enforcement matters; hearing officer selected from, or recommended by, the California Office of Administrative Hearings; qualified arbitrator employed by any private firm that specializes in providing alternative dispute resolution or arbitration services; or any other person with sufficient training, experience, and qualifications to render a reasoned and impartial decision regarding the matters appealed. The County is authorized to enter into a contract with an individual, company, or firm to provide hearing officer services, provided the individual, company, or firm adopts and follows adequate procedures for maintaining neutrality and avoiding conflicts of interest.

D. 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, unless a different date is mutually agreed upon by the appellant and Director. Notice of the appeal hearing shall be mailed by registered mail at least fifteen (15) 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.

E. In reviewing the Notice of Violation, the hearing officer shall consider the factors set forth in section 8.90.110 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 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.

F. 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 as set out in section 8.90.140

8.90.140 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.

8.90.150 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. Such costs include, without limitation, staff and counsel time incurred in the collection of the penalty, attorney fees for processing the civil action, 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 or 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, such as is provided for pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 *et seq.*

8.90.160 Appeal Fees Authorized. The Board of Supervisors is authorized to establish reasonable fees for the filing, processing, and handling of the administrative appeal authorized by Section 8.90.130. 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.

8.90.170 Exemption from Appeal Fees. The Board of Supervisors may consider applications for exemption from any filing fees established per the preceding section in cases of undue financial hardship. Any applicant requesting such an exemption may file a request for the exemption at the time he or she files an appeal under section 8.90.130. The Board of Supervisors shall act on the request for exemption prior to any proceedings under sections 8.90.130. If the Board finds an undue financial hardship exists on the appellant, it may exempt the applicant from the filing fees in whole or in part. For purposes of this section, undue financial hardship shall be strictly construed. If the request for exemption is denied, in whole or in part, the appellant shall pay the filing fee, or portion thereof the Board determines he or she shall pay, within 10 working days of the Board of Supervisors meeting in which the request for exemption is heard. The appellant's failure to pay the fee within this time shall constitute a waiver of its right to appeal.

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.

SECTION III. This ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this ordinance may be construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that prohibiting the establishment of generally applicable code enforcement procedures has no possibility of having a significant effect on the environment, as set forth in California Code of regulations, title 14, section 15061, subdivision (b)(3). Further, this ordinance is exempt from CEQA pursuant to the provisions of Public

Resources Code section 21080, subdivision (b)(4) and California Code of regulations, title 14, sections 15307 and 15308.

Introduced at a regular meeting of the Board of Supervisors held on the 7th day of June 2011, and passed and adopted by the Board of Supervisors of the County of Trinity State of California, on the 21st day of June, 2011, by the following roll call vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

JUDY MORRIS
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