



Community and Economic Development  
Planning Division

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**PLANNING COMMISSION DATE:** May 1, 2018

**AGENDA ITEM:** #3

<b>CZ</b>	<b>#2017-005</b>	<b>Amend the County Code, Title 8, Chapter 8.01 to amend the appeal process for an Administrative Citation</b>
<b>APN</b>	<b>Countywide</b>	<b>Applicant: Madera County</b>
<b>CEQA</b>		<b>EXEMPT</b>

**REQUEST:**

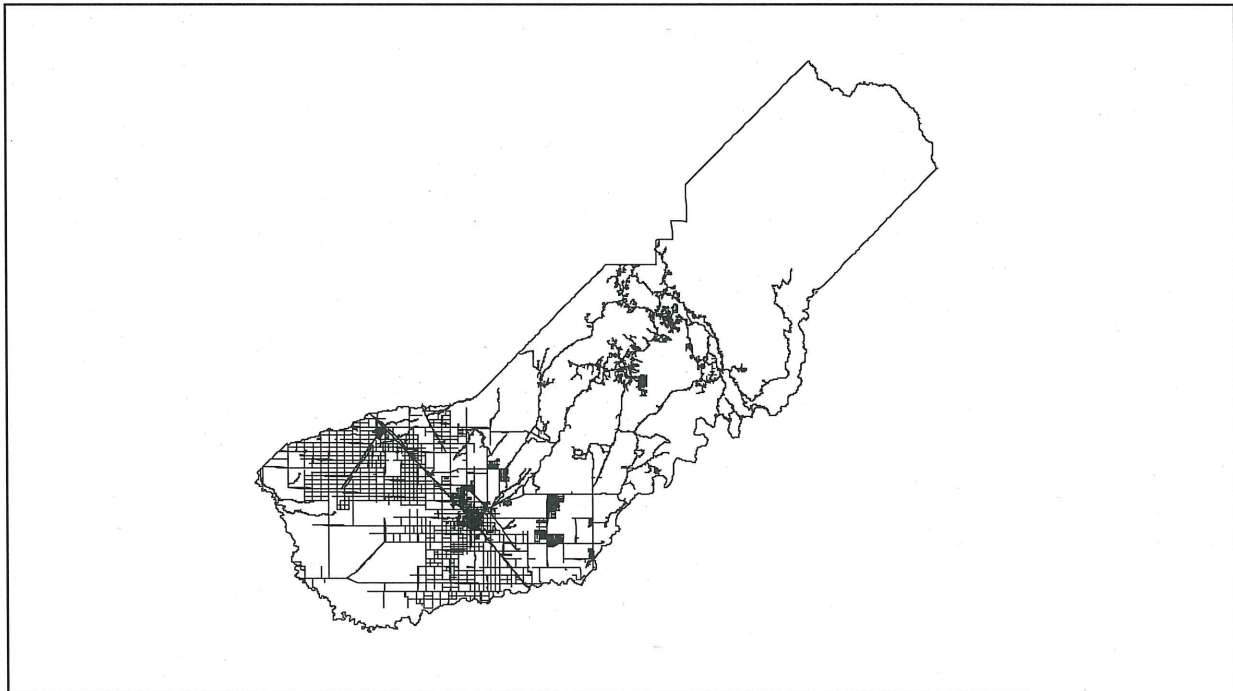
This is a proposal by the County of Madera to amend the Madera County Ordinance, Title 8, Chapter 8.01, to modify the appeal process for an Administrative citation.

**LOCATION:**

The proposed amendments will affect all zone districts in Madera County.

**ENVIRONMENTAL ASSESSMENT:**

Under the provisions of the California Environmental Quality Act (CEQA), Section 15061(b)(3), and the Madera County Environmental Guidelines, the County has determined that this amendment will not have a significant effect on the environment and is exempt from CEQA.



**RECOMMENDATION:** Recommend approval of the proposed amendments to sections of the Madera County Code, Title 8 to the Board of Supervisors.

**PROJECT DESCRIPTION:**

This is a proposal by the County of Madera to amend the Madera County Ordinance, Title 8, Chapter 8.01, to address appeal process for an Administrative Citation.

**ORDINANCES/POLICIES:**

Chapter 8.01 of the Madera County Zoning Ordinance.

**ANALYSIS:**

Title 8, Section 8.01.070 of the Madera County Code states that any person disputing the issuance of an administrative citation may contest the citation by completing a request for hearing form within 10 days of issuance of the administrative citation. A Hearing Officer sets a date and time for the hearing within 20 days of the request.

The director of the department issuing the administrative citation shall contract with an agency or entity to provide professional services to preside at the hearing and hear all facts and testimony presented and deemed appropriate. Such agencies or entities and their personnel shall be designated as "hearing officers." Any person designated to serve as a hearing officer is subject to disqualification for bias, prejudice, interest or for any other reason for which a judge may be disqualified pursuant to Section 170.1 of the California Code of Civil Procedure.

The process for appealing the Hearing Officer's decision to the Board of Supervisors is being removed.

**GENERAL PLAN CONSISTENCY:**

The proposed text amendment is consistent with the goals and policies of the General Plan.

**RECOMMENDATION:**

Recommend approval of the proposed amendments to sections of the Madera County Code, Title 8 to the Board of Supervisors.

**ATTACHMENTS:**

1. Exhibit A, Title 8, Chapter 8.01 Administrative Citations and Penalties

**BEFORE  
THE BOARD OF SUPERVISORS  
OF THE COUNTY OF MADERA  
STATE OF CALIFORNIA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 8.01 OF TITLE 8  
OF THE MADERA COUNTY CODE AS IT PERTAINS TO ADMINISTRATIVE  
PROCEEDINGS**

The Board of Supervisors of the County of Madera does ordain as follows:

**SECTION 1.** Section 8.01.070 of the Madera County Code is amended to read as follows:

**8.01.070 - Appeal of administrative citation.**

Any person disputing the issuance of an administrative citation may contest the citation by completing a request for hearing form, in a format to be prepared by the ~~resource management agency~~ Community and Economic Development Department, and returning it to the address stated on the form within ten days from the date of issuance of the administrative citation, ~~together with an advance deposit of the full amount of the penalty. Any administrative citation 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 citation.~~ The time requirement for filing a request for hearing form shall be deemed jurisdictional and may not be waived.

**SECTION 2.** Section 8.01.080 of the Madera County Code is repealed.

~~**8.01.080 – Hardship waiver for payment of advance deposit.**~~

~~A.—— Any person, who intends to request a hearing under Section 8.01.100 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 director of the department issuing the administrative citation within ten days of the date of the issuance of the citation.~~

~~C.—— The requirement of depositing the full amount of the administrative penalty as described in Section 8.01.100 shall be stayed unless and until the director makes a determination not to issue the advance deposit hardship waiver.~~

~~D.—— The director may waive the requirement of an advance deposit and issue the~~

~~waiver only if the person receiving the administrative citation submits to the director proof of the person's actual financial inability to deposit with the county the full amount of the penalty in advance of the hearing, as shown on a fee-waiver form to be made available by the director and signed under penalty of perjury. The fee-waiver form shall conform to the requirements of Section 68511.3 of the California Government Code, or at a minimum shall contain the same elements as the application form for waiver of court fees and costs prepared by the Judicial Council of California for use in California courts.~~

~~E. If the director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the county within ten days of the date of the decision or thirty days from the date of issuance of the administrative citation, whichever is later.~~

~~F. The director shall issue a written decision explaining the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written decision of the director shall be final.~~

~~G. The written decision of the director shall be mailed to the person who applied for the advance deposit hardship waiver at the address provided in the application.~~

**SECTION 3.** Section 8.01.100 of the Madera County Code is amended to read as follows:

**8.01.100 - Hearing procedure.**

A. No hearing to contest an administrative citation before a hearing officer shall be held unless ~~both~~ a request for hearing form has been completed and timely submitted, ~~and the amount of the penalty for the citation has been deposited in advance, unless a waiver has been granted under Section 8.01.080.~~

B. A hearing before the hearing officer shall be set for a date that is not less than twenty days but no more than ninety days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The responsible party requesting the hearing shall be notified of the time and place set for hearing at least ten days prior to the date of the hearing.

C. The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the recipient of the administrative citation has caused or maintained the violation(s) on the date(s) specified in the administrative citation.

D. Any administrative hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The hearing officer has discretion to exclude evidence if

its probative value is substantially outweighed by the probability that its admission will cause undue consumption of time. Personal information about any reporting party related to the violation(s) shall not be disclosed.

E. The hearing officer may continue the hearing as necessary.

F. The failure of a responsible party to appear at the administrative citation hearing, after receiving notice of the hearing, shall constitute a forfeiture of the fine and be deemed a failure to exhaust administrative remedies.

**SECTION 4.** Section 8.01.110 of the Madera County Code is amended to read as follows:

**8.01.110 - Administrative order.**

A. Within ten days of the conclusion of the hearing, the hearing officer shall provide the responsible party with a written decision known as an "administrative order." The hearing officer shall serve the administrative order on the responsible party by personal service or registered or certified mail at the responsible party's last known address.

B. The administrative order shall contain the hearing officer's findings of fact and conclusions and a statement regarding the procedure described in Section 8.01.120 for seeking review by the board of supervisors. The decision of the hearing officer shall be final except as provided in Section 8.01.120.

C. A decision in favor of the responsible party shall constitute a dismissal of the ordinance violation(s) administrative penalty and the county shall return any moneys paid by the responsible party.

D. If the hearing officer renders a decision in favor of the county, the responsible party must comply with the administrative order, including payment of any administrative penalty, or seek review under Section 8.01.120.

[E. This Section and Section 8.01.120 notwithstanding, administrative orders issued on all citations for violation of Chapter 18.87 shall be considered final, with no further right of appeal to the board of supervisors.](#)

**SECTION 5.** Section 8.01.120 of the Madera County Code is amended to read as follows:

**8.01.120 - Further appeal to board of supervisors.**

A. [Excepting citations issued under Chapter 18.87, A-a](#) responsible party, who is subject to an administrative order issued by a hearing officer pursuant to Section 8.01.110, may contest the administrative order by filing an appeal with the clerk of the

board of supervisors within fifteen days from the date of service of the administrative order.

B. The appeal of the administrative citation may be considered de novo by the board of supervisors. The board of supervisors may reverse, affirm wholly or partly, or modify the administrative order. The decision of the board of supervisors on any such appeal shall be final on adoption of an order containing its determination. Notice of the final decision shall be served by certified or registered mail on the affected persons.

C. Pursuant to Section 1085 of the Code of Civil Procedure, any person who has been named in an order issued pursuant to this chapter, may, following exhaustion of administrative remedies, seek judicial review of the order by filing a petition for writ of mandate within ninety days after the order becomes final and binding pursuant to this chapter. Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, any person who contests the final administrative order issued under this chapter regarding the imposition, enforcement or collection of the administrative penalties imposed may seek judicial review of the order by filing an appeal with the superior court within twenty days after service of the order in accordance with Section 53069.4 of the Government Code. Any other person who has the right to seek judicial review of the order by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one hundred eighty days after the order has become final and binding pursuant to this chapter. The filing of a petition for writ of mandate to review the order shall not stay any action specified in the order.

**SECTION 6.** Severability.

If any article, section, sub-section, sentence, clause, or phrase of this ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each article, section, sub-section, sentence, clause, and phrase hereof, irrespective of the fact that one or more articles, sections, sub-sections, sentences, clauses, and phrases be declared invalid.

**SECTION 7.** Effective date.

This Ordinance shall take effect thirty (30) days after its adoption.

Notwithstanding the foregoing, those qualified patients and persons with identification cards, and primary caregivers, who were cultivating marijuana in the County as of the date this Ordinance was introduced by the Board of Supervisors in strict compliance with the medical marijuana cultivation regulations then in effect, and remain in strict compliance with those regulations, shall have a period of ninety (90) days from the Effective Date to comply with the amended regulations set forth in this Ordinance. For purposes of this grace period, cultivating marijuana shall mean actual growing plants. No new plantings or seedlings are allowed.

**SECTION 8.** Publication.

The Clerk of the Board is hereby directed to cause a summary of this Ordinance to be published by one insertion in a newspaper of general circulation in the County at least five (5) days prior to adoption and again fifteen (15) days after its adoption. If a summary of the ordinance is published, then the Clerk of the Board shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the Clerk of the Board at least five (5) days prior to the Board of Supervisors meeting at which the ordinance is adopted, and again after the meeting at which the ordinance is adopted. The summary shall be approved by the County Counsel.

\* \* \* \* \*

The foregoing Ordinance was adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote.

Supervisor Frazier voted: \_\_\_\_\_

Supervisor Rogers voted: \_\_\_\_\_

Supervisor Poythress voted: \_\_\_\_\_

Supervisor Rodriguez voted: \_\_\_\_\_

Supervisor Wheeler voted: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk, Board of Supervisors

Approved as to Legal form:  
COUNTY COUNSEL

By \_\_\_\_\_