

DEPARTMENT: BUILDING

BY: Fred Lustenberger
PHONE: 209-966-3934

RECOMMENDED ACTION AND JUSTIFICATION:

() Waive Second Reading and Adopt Ordinance creating Section 15.10.61 County Code to create a policy for the handling of violations and a standard penalty schedule with changes pursuant to Board discussion of March 24, 2009. Adopt Resolution setting amnesty period with changes pursuant to Board discussion of March 24, 2009.

Request Board approval to create a standard violation policy in order to ensure uniformity and consistency of all violation inspections and procedures. The policy will specifically address structural, life-safety (escape from fire), and sanitation issues to make certain the basic, minimum requirements are met. The current policy has proven insufficient to deter people from building without obtaining permits, paying fees and taxes, or ensuring the safety and security of the structures. Also adopt Resolution setting amnesty period.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Currently, Mariposa County Code Section 15.10.060 refers to Section 1. 20.10 for the prescription of penalties for Building Code Violations (Ord. 467 Sec. A, 1977). The penalty (considering all building code violations to be misdemeanors) is not always appropriate or practical for Building Code enforcement purposes. Further, in 2006 the Board approved amendments to County Code Section 15.28 (Grading & Excavating) establishing prescribed penalties for grading violations.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternative: Status Quo: Continue code enforcement operations without effective and coherent policies and procedures.

- Consequences: 1. Continue to allow unpermitted buildings to be built which may be unsafe.
2. Continue to lose tax money and school developer fees on buildings built without permits.

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		Ordinance entitled Code Violation Penalties
Source:		Amnesty Period Resolution
Internal Transfer		
Unanticipated Revenue	_____ 4/5's vote	
Transfer Between Funds	_____ 4/5's vote	
Contingency	_____ 4/5's vote	
() General () Other		

CLERK'S USE ONLY:

Res. No.: 09-161 Ord. No. 1051
Vote - Ayes: 5 Noes: _____
Absent: _____
Approved
() Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

_____ Requested Action Recommended
_____ No Opinion
Comments:

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

CAO: _____

MARIPOSA COUNTY ORDINANCE NO. 1051

**AN ORDINANCE CREATING SECTION 15.10.061
OF CHAPTER 15.10 OF THE MARIPOSA COUNTY CODE
ENTITLED "CODE VIOLATION PENALTIES"**

WHEREAS, the Board of Supervisors desire to create Section 15.10.61 of the Mariposa County Code, and

WHEREAS, this revision to Chapter 15.10 is declarative of the current County enforcement policies;

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

SECTION I: Section 15.10.061 of Chapter 15.10 of the Mariposa County Code is hereby created to read as follows:

15.10.061 Civil penalty for violation of certain building, zoning, public health, grading and drainage regulations.

A. Charge – Code Violation. In addition to any other fee or penalty imposed by this code or by law, any person who violates Sections 15.10, 15.11, 15.12, 15.14, 15.28 of this code shall:

1. If the violation arises from an unlawful commercial, rental or similar use or structure on the property, pay one of the following sums, as determined by the enforcing officer, to the County of Mariposa:
 - a. The fair market rental value of the land or structure in violation for the period of time elapsed from the date of mailing the notice of violation through to its abatement by whatever means; or
 - b. No less than twenty-five dollars (\$25.00) per day and no more than one hundred dollars (\$100) per day for the first violation; no more than two hundred dollars (\$200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars (\$500) per day for each additional violation of the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means; or
 - c. In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of ten (10) times the amount of the standard fee for every required approval, review, and permit.
2. If the violation arises from an unlawful owner-occupied residential use or structure on the property, pay one of the following sums, as determined by the enforcing officer, to the County of Mariposa:
 - a. The fair market rental value of the land or structure in violation for the period of time elapsed from the date of mailing of the notice of violation through to its abatement by whatever means; or
 - b. No less than fifteen dollars (\$15.00) per day and no more than one hundred dollars (\$100) per day for the first violation; no more than two hundred dollars (\$200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars (\$500) per day for each additional violation of

the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means; or

- c. In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of five (5) times the amount of the standard fee for every required approval, review, and permit.
3. For any other violation, including but not limited to an unlawful noncommercial junkyard, an unlawful noncommercial truck terminal, and unlawful nonoperative vehicle storage yard, an unlawful accessory structure, pay one of the following sums, as determined by the enforcing officer, to the County of Mariposa:
 - a. No less than five dollars (\$5.00) per day and no more than one hundred dollars (\$100) per day for the first violation; no more than two hundred dollars (\$200) per day for a second violation of the same ordinance within one year; and no more than five hundred dollars (\$500) per day for each additional violation of the same ordinance within one year for each day that the violation exists after the date of mailing of the notice of violation through to its abatement by whatever means.
 - b. In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of five (5) times the amount of the standard fee for every required approval, review, and permit.
 4. The enforcing officer shall have the sole and exclusive discretion to set the amount of civil penalties within the ranges set forth in this section. Except that the enforcing officer shall not impose a penalty greater than the minimum amount in a range of civil penalties set forth in this section, unless the enforcing officer's department has adopted a written policy setting forth how civil penalties within the ranges are determined.

B. Enforcing Officer. For the purposes of this section "Enforcing Officer" means the Director of The Mariposa County Building Department or his/her designee.

C. Determination of Penalties. The determination of charges imposed under this section shall, in the first instance, be performed by the enforcing officer or his or her designee. Such determination shall take into account the facts and circumstances of the violation including, but not limited to, whether or not the violation poses a threat to human health, safety, or to the environment; the seriousness or gravity of the violation; the length of time the violation has existed; the culpability of the person in violation or the willfulness of the violation; the knowledge of and familiarity with building regulations of the persons creating or causing the violation; the extent of the violation and its effect on adjoining properties; attempts, if any to comply with the applicable ordinances; and any other information which might be relevant to the determination of charges to be imposed by this section. At the discretion of the enforcing officer, or his or her designee, or upon the appeal of the property owner, the determination may be referred to the Mariposa County Building Advisory and Appeals Board. A person dissatisfied with the decision of the Appeals Board may appeal to the Board of Supervisors pursuant to the County Code appeals procedures in place at that time.

D. Exclusions.

1. The charges imposed by this section shall not apply if the property owner establishes that, at the time he or she acquired the property, (i) a violation of this code existed on the property, (ii) the property owner did not have actual or constructive notice of the existence of that violation, and (iii) within thirty (30) days after the mailing of notice of existence of that violation, the property owner initiates and pursues, with due diligence, good faith efforts, as determined solely


by the enforcing officer, to meet the requirements of this code. A property owner has constructive notice of the existence of a violation if the property owner has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact and if by prosecuting such inquiry, the person might have learned that a violation existed on the property.

2. The charges imposed by this section shall not apply if the owner establishes that (i) within thirty (30) days after the date of mailing of notice of the existence of the violation, the property owner removed from the property the use or structure which constituted that violation, and (ii) the property owner had not previously been mailed a notice of a violation of the same code section, regardless of the parcel on which such violation occurred.
3. From time to time, the Board of Supervisors may amend or temporarily suspend the provisions of this section by the adoption of a resolution establishing an amnesty period for a period of time so stipulated in the resolution.

SECTION II: This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code §25123.

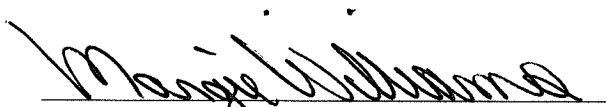
PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 7TH day of April, 2009 by the following vote:

AYES: ABORN, TURPIN, BIBBY, CANN, ALLEN
NOES: NONE
ABSTAINED: NONE
EXCUSED: NONE



BRAD ABORN, Chairman
Mariposa County Board of Supervisors

ATTEST:



MARGIE WILLIAMS
Clerk of the Board

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel