

Chapter 1.10

CODE COMPLIANCE

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1.10.010 Intent to secure compliance.

A. The Board of Supervisors of the County of Tuolumne intends to secure compliance with the provisions of this Code, including its adopted codes and ordinances. It is the intent of the Board of Supervisors in adopting this Chapter to provide a comprehensive method for the abatement of public nuisances and Code violations within the unincorporated area of the County of Tuolumne, in order to protect and promote the health, safety and general welfare of the people within the unincorporated area of the County.

B. Violations of this Code are injurious to the public health, safety and welfare. This Chapter is intended to promote and maintain a safe and desirable living and working environment and maintain and improve the quality of life in the County of Tuolumne by administering a fair and unbiased enforcement program to correct violations. Violations may affect the entire

County or a considerable number of County inhabitants by impairing the safety of building occupants, harming the health or safety of neighborhood residents, or breaching the reciprocal rights and expectations of owners in zoning districts. It is the general policy of the Board of Supervisors that violations impacting health and safety take priority over other types of violations.

C. The provisions of this Chapter are to be supplementary and complementary to all of the provisions of the Tuolumne County Ordinance Code, State law, and any law cognizable at common law, or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Tuolumne or the District Attorney of the County of Tuolumne to take appropriate action to abate any and all public nuisances, or to prosecute or remedy violations of the Tuolumne County Ordinance Code. (Ord.

3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1(part), 1999).

1.10.020 Definitions. The following words and terms when used in this Chapter shall be construed as defined in this Section, except as otherwise provided:

A. Except for violations impacting health and safety and violations of Title 17 or Chapter 15.36, an Opportunity to Correct or Notice and Order shall not be issued for violations which have been in existence for five (5) years prior to the date of discovery.

B. "Abatement costs" shall mean all costs related to abatement incurred by the County, including, but not limited to, administrative costs, costs for investigating the violation, for monitoring and enforcing any abatement, or for any physical abatement action by the County, and any ordered attorneys' fees. Abatement costs are deemed incurred for time expended by County employees and use of County facilities or equipment as well as any expenses of contractors hired by the County, and these costs shall be calculated at the rate(s) determined by the County to reflect all direct and indirect costs. The Board of Supervisors may set standard abatement costs by resolution.

C. "Code Compliance Officer" shall mean the County official designated by resolution of the Board of Supervisors and his/her designee(s).

D. "Correct" or "correction" shall mean abate or abatement.

E. "Days" shall mean calendar days.

F. "Department head" shall mean the administrative director or designee of a department of the County of Tuolumne with the authority to enforce provisions of this Code.

G. "Enforcement officer" shall mean any County officer or employee, including his/her designee, with the authority to enforce this Code, its adopted codes or applicable State codes.

H. "Final Abatement Order" shall mean a decision and order, determining the existence of a violation, imposing penalties, and ordering abatement.

I. "Good cause" shall mean the following:

1. Substantial or legally sufficient reason for taking an action.

2. For requests for penalty reductions, substantial or legally sufficient reasons shall include consideration of the following circumstances: proportionality between the penalty amount and the gravity of or amount of harm caused by the offense, and substantial financial hardship if required to pay, including

present and future ability to pay, and amount of assets and liabilities.

J. "Hearing Board" shall mean the Board of Supervisors or other hearing board designated by the Board of Supervisors pursuant to Section 1.10.180.

K. "No-permit violation" shall mean a violation for failure to obtain a permit.

L. "Notice and Order" or "NAO" shall mean the written notice provided to an owner and/or other responsible person to inform that person of a violation of this Code, its adopted codes or applicable State codes.

M. "Opportunity to Correct" shall mean the written notice provided to an owner and/or responsible person describing the actions necessary, and the initial time (not to exceed ninety (90) days) within which to correct a violation.

N. "Owner" shall mean the owner of a parcel subject to this Chapter, as disclosed in the records of the County Assessor's Office at the time an Opportunity to Correct is given or the Notice and Order is served.

O. "Responsible person" shall mean either of the following:

1. Any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen (18) years, who causes, permits or maintains a violation of this Code, its adopted codes or applicable State codes.

2. Any individual, legal entity or the parent or the legal guardian of any person under the age of eighteen (18) years, who causes, permits or maintains a violation of this Code, its adopted codes or applicable State codes.

P. "Violation" shall mean any of the following:

1. A public nuisance as defined in Civil Code section 3479 et seq.; or

2. Any condition caused or permitted to exist in violation of any of the provisions of this Code, or its adopted codes, or State codes. A violation of this Code includes, but is not limited to, all violations of this Code and its adopted codes, or failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved under the provisions of this Code.

Q. "Violations impacting health and safety" shall mean violations of the provisions of this Code that may cause deleterious effects to the health and safety of the public and shall include, but not be limited to: substandard housing, dangerous buildings septic system failures, work without permits, unpermitted grading and accumulated solid waste. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2 (part), 2023); Ord. 3274 § 1, 2015; Ord. 3262 § 1, 2014; Ord. 3195 § 1, 2012; Ord. 2734 § 1, 2006; Ord. 2707 § 3, 2006; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.030 Administration of chapter.

A. The Board of Supervisors hereby establishes the office of Tuolumne County Code Compliance Officer, serving at the pleasure of the Board, who shall implement this Chapter except as otherwise provided.

B. The Code Compliance Officer may, for good cause at any time, reduce or eliminate a monetary penalty imposed through Section 1.10.070(C) on a Notice and Order or a Final Abatement Order. Whether or not good cause exists to reduce or eliminate any monetary penalty shall be determined by the Code Compliance Officer in consultation with the department head. Abatement costs shall not be subject to reduction. The decision of the Code Compliance Officer regarding a request to reduce monetary penalties may be appealed to the Board of Supervisors by filing a written request with the Code Compliance Officer within fifteen (15) days after service of the Code Compliance Officer's written decision.

C. There is hereby created a Code Compliance Trust Fund for the purpose of financing costs of physical abatement incurred by the County, payment of any attorneys' fees ordered paid by the County, and any other costs related to the code compliance program approved by the Board of Supervisors. Administrative penalties and abatement costs recovered for violations shall be credited to the Code Compliance Trust Fund. (Ord. 3432 § 2 (part), 2023; Ord. 3262 § 2, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.040 Violations; County administrative prosecution.

A. Except for cases impacting health and safety, an enforcement officer may seek abatement of a violation under the provisions of this Chapter only in the following circumstances:

1. Submission of a written or oral complaint of violation to the County;
2. Enforcement officer discovery of

a violation, other than a violation of Title 17; with the exception of violations of 17.10, 17.14, 17.16, 17.18 and 17.20;

3. Enforcement officer discovery of a violation of a permit or condition of a permit;
4. Enforcement officer discovery of a violation during review of any application submitted to a County department;
5. Discovery of a violation observable during the process of investigating any violation of law.

B. Prosecution of violations pursuant to this Chapter is up to the discretion of the County.

C. Identity of a complainant shall be confidential and not subject to disclosure.

D. Except for cases impacting health and safety, in the event that the County has not recorded a Final Abatement Order within two (2) years after the date of the circumstances listed in Subdivision A, the case shall be deemed closed without the right to reopen or refile under the provisions of this Chapter. Whenever an owner and/or responsible person requests additional time to correct a violation, requests a statute of limitations review pursuant to Section 1.10.120, or submits an appeal pursuant to Section 1.10.140, this two-year period shall be tolled until the expiration of such extension or the issuance of a final decision as to the statute of limitations and/or appeal. (Ord. 3457 § 2 (part), 2024; Ord. 3262 § 3, 2014; Ord. 3195 § 1, 2012; Ord. 3016 § 18, 2009; Ord. 3003 § 3, 2008; Ord. 2612 § 2, 2005; Ord. 2556 § 2, 2004; Ord. 2314 § 1, 1999; Ord. 2296 § 1 (part), 1999).

1.10.050 Interference with work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the County, or with any person who owns or holds any estate or interest in any parcel, whenever such officer, employee, contractor or authorized representative of the County, or person having an interest or estate in such parcel, is engaged in the work of investigating or abating any violation, as authorized or directed by the provisions of this Chapter, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this Chapter. (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.060 Right of entry.

Enforcement officers may enter on a parcel at reasonable times to make inspections for violations of this Code or to abate nuisances as

authorized by this Chapter. When such entry will infringe on the constitutional right of privacy, entry shall be made with consent of one with apparent authority, by authority of an inspection warrant, or as otherwise provided by law. Inspection warrants or other authority for entry may be obtained by the enforcement officer with the assistance of the County Counsel. (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.070 General administrative provisions.

A. Each and every day or portion thereof that a violation of this Code, its adopted codes or applicable State codes exists constitutes a separate and distinct offense.

B. A civil penalty assessed by means of a Notice and Order issued by an enforcement officer shall be payable directly to the County of Tuolumne. The responsible person shall be personally liable for the administrative penalties.

C. Except where otherwise provided in this Code, penalties shall be assessed in the amounts specified by resolution of the Board of Supervisors, or where no amount is specified, penalties shall be assessed in an amount not exceeding:

1. For unspecified violations: One hundred dollars (\$100.00) for a first violation; Two hundred dollars (\$200.00) for a second violation of the same provision within a twelve (12) month period; Five hundred dollars (\$500.00) for each additional violation of the same provision within a twelve (12) month period. A violation of this part shall be subject to a daily penalty, pursuant to Section 1.10.070 (A) for a period not to exceed 15 days once a Notice and Order (NOA) has been issued.

2. For violations of local building and safety codes, the following shall be assessed on a daily basis, pursuant to Section 1.10.070 (A), for a duration not to exceed 15 days once a Notice and Order (NOA) has been issued: One hundred thirty dollars (\$130.00) for a first violation; Seven hundred dollars (\$700.00) for a second violation within a twelve (12) month period; One thousand three hundred dollars (\$1,300.00) for a third violation within a twelve (12) month period; Two thousand five hundred dollars (\$2,500.00) for each additional violation of the same ordinance within two (2) years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to

the failure of the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

3. For violations of event permit requirements: One hundred fifty dollars (\$150.00) for the first violation; Seven hundred dollars (\$700.00) for a second violation by the same owner or operator within a thirty six (36) month period; Two thousand five hundred dollars (\$2,500.00) for each additional violation by the same owner or operator within a thirty six (36) month period.

4. For violations of short-term rental requirements: One thousand five hundred dollars (\$1,500.00) for a first violation; Three thousand dollars (\$3,000.00) for a second violation within a twelve (12) month period; Five thousand dollars (\$5,000.00) for each additional violation within a twelve (12) month period.

5. For violations of illegal dumping prohibitions: One thousand dollars (\$1,000.00) for a first violation; One thousand five hundred dollars (\$1,500.00) for a second violation within a twelve (12) month period; Three thousand dollars for each additional violation within a twelve (12) month period. Should a violation be determined to be the result of a commercial business or where payment has been made to an individual in connection with the illegal dumping, the penalties listed shall be doubled pursuant to Section 7.30.020 (A)5.

6. For violations of grading, stockpiling, and encroachment requirements: Four (4) times the permit fee.

D. Any additional violation(s) or expansion of an existing violation(s), subject to this section, confirmed after the issuance of any Notice, shall have a new Notice issued and shall be subject to additional penalties pursuant to this section. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2, (part), 2023; Ord. 3195 § 1, 2012; Ord. 2835 § 1, 2007; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.080 No-permit violations.

A. To correct a no-permit violation, the owner and/or other responsible person shall:

1. Apply for the required permit within the time period set forth in the Opportunity to Correct or Notice and Order and pay any application fee;
2. Reasonably pursue the permit application process, including, when requested, providing information for environmental or other permit review, and revising plans;

3. Approve or otherwise respond within ten (10) days to a notice of proposed conditions; and
4. Pay for and obtain a permit within ten (10) days of telephonic or written notice by the County that the permit is ready to be issued.

B. Failure to final or obtain the permit by completing all requirements of the permit and obtaining all required inspections or meet any conditions thereof may result in the initiation of a new code compliance case under the provisions of this Chapter and may be subject to continuing penalties pursuant to Section 1.10.070 (C) (2). (Ord. 3432 § 2, 2023; Ord. 3195 § 1, 2012; Ord. 2612

1.10.090 Opportunity to Correct.

A. Except for violations impacting health and safety, the enforcement officer shall send the owner and/or other responsible person an Opportunity to Correct prior to issuing a Notice and Order.

B. An Opportunity to Correct shall contain the following information:

1. Date, approximate time and address or definite description of the location where the violation(s) was observed;
2. Name and address, if known, of the owner and/or other responsible person;
3. The code section(s) or condition(s) violated and a description of the violation(s);
4. A description of the action required to correct the violation(s), including, when repair or removal is economically infeasible, demolition of structures or destruction of real or personal property;
5. A correction date and an explanation of the consequences of failure to correct the violation(s);
6. The amount of the penalty for the violation(s) and potential for abatement costs liability, if not corrected by the correction date;
7. An explanation of the procedures to apply the statute of limitations set forth in Section 1.10.120 and the potential for reassessment of the property by the County Assessor; and
8. The name and signature of the enforcement officer. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012)

1.10.100 Notice and Order.

A. An enforcement officer may issue a Notice and Order for violations impacting health and safety or for violations for which the Opportunity to Correct has expired.

B. Each Notice and Order shall contain the following information:

1. Date, approximate time and address or definite description of the location where the violation(s) was observed;
2. Name and address, if known, of the owner and/or other responsible person;
3. The code section(s) or condition(s) violated and a description of the violation(s);
4. A description of the action required to correct the violation(s), including, when repair or removal is economically infeasible, demolition of structures or destruction of real or personal property;
5. The amount of the penalty for the violation(s), current amount of abatement costs and the potential for additional abatement costs liability;
6. An explanation of how the penalty shall be paid, the deadline by which it shall be paid, and the place to which the penalty shall be paid;
7. A date by which the violation is required to be abated or corrected which shall not be for a period of less than 15 days except for violations found to impact health and safety;
8. An explanation of how the abatement costs are calculated and how the abatement costs shall be paid, the deadline by which it shall be paid, and the place to which the abatement costs shall be paid;
9. An order prohibiting the continuation or repeated occurrence of the code violation(s) described in the Notice and Order;
10. If applicable, the decision of the Code Compliance Officer with regard to the application of the statute of limitations provisions of Section 1.10.120 and the potential for reassessment of the property by the County Assessor;
11. Identification of rights of appeal, including the time within which the Notice and Order may be contested and the place to submit a written appeal request to contest the Notice and Order; and

12. The name and signature of the enforcement officer.

C. If, after correction, the same violation is committed on the same parcel within twelve (12) months, another Notice and Order may be issued.

D. Unless a written appeal request is timely filed on a Notice and Order:

1. The violation(s) shall be deemed admitted, the penalty and obligation for abatement costs shall be deemed accepted, and the Notice and Order shall be deemed a Final Abatement Order as the final determination not subject to further administrative appeal on these issues and imposition of abatement costs and penalties;

2. The enforcement officer shall provide notice to the owner and/or other responsible person pursuant to Section 1.10.110 a copy of the Final Abatement Order and Demand for Payment, or in the instance which the violation has been corrected within the time specified in 1.10.100(B)(7), a Demand for Payment;

3. The administrative penalties imposed through Section 1.10.070(C) and the abatement costs as set by resolution of the Board shall be paid to the County within fifteen (15) days after the expiration of the appeal period.

E. The Code Compliance Officer may, for good cause, rescind an issued Notice and Order in an effort to gain compliance of the noted violation(s). (Ord. 3457 § 2 (part), 2024; Ord. 3262 § 4, 2014; Ord. 3195 § 1, 2012; Ord. 2668 § 4 2006; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.110 Service procedures.

All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b). The failure of a person to receive actual notice after a properly addressed service attempt shall not affect the validity of the proceedings.

A. Certified mail and posting. Certified mail will be addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known. Service is deemed completed upon the deposit of the notice or decision, postage pre-

paid, in the United States mail.

Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail. Posting of the notice or decision will be conspicuously on or in front of the property. If the property has no frontage, posting will be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner.

B. Personal service. Personal service is deemed complete on the date the notice or decision is personally served. (Ord. 3195 § 1, 2012; Ord. 2668 § 4, 2006; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.120 Statute of limitations.

A. Except for violations impacting health and safety and violations of Title 17 or Chapter 15.36, an Opportunity to Correct or Notice and Order shall not be issued for violations which have been in existence for five (5) years prior to the date of discovery.

B. If an owner and/or other responsible person believes an Opportunity to Correct has been issued in conflict with this Section, he or she may file a request for withdrawal of the Opportunity to Correct with the Code Compliance Officer, along with evidence supporting the claim within fifteen (15) days of service of the Opportunity to Correct. The correction date listed in the Opportunity to Correct is stayed until fifteen (15) days after Code Compliance Officer's decision is mailed to the owner and/or responsible person.

C. The issue of the statute of limitations and the Code Compliance Officer's decision thereon may be included in an appeal of a Notice and Order.

D. Notwithstanding the application of the statute of limitations pursuant to this Section, all allegations of no-permit violations shall be referred to the County Assessor's Office for potential reassessment. (Ord. 3274 § 1, 2015; Ord. 3262 § 5, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2459 §§ 1,2, 2002; Ord. 2328 § 1, 2000; Ord. 2296 § 1 (part), 1999).

1.10.130 Satisfaction of Opportunity to Correct or Notice and Order.

A. Upon receipt of an Opportunity to Correct, the owner and/or other responsible person shall do the following:

1. Correct the violation(s), if the violation(s) is of such a nature that it can be corrected. If a violation(s) is

corrected before the correction date provided on the Opportunity to Correct, no penalty shall be imposed.

2. If additional time is needed to correct the violation, submit a written request to the enforcement officer prior to the correction date. Such request shall include justification for any extension and a defined plan to complete abatement within a reasonable timeframe. The enforcement officer may deny the extension request upon concurrence of the Code Compliance Officer.

B. Upon receipt of a Notice and Order, the owner and/or other responsible person shall do the following:

1. Correct the violation(s), if the violation(s) is of such a nature that it can be corrected.

2. Pay the penalty imposed through Section 1.10.070(C) to the County within fifteen (15) days after the expiration of the appeal period on the Notice and Order. All penalties assessed shall be payable to the County of Tuolumne. Payment of a penalty shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the County.

3. Pay the abatement costs as set by the resolution of the Board to the County within fifteen (15) days after the expiration of the appeal period on the Notice and Order. (Ord. 3457 § 2 (part), 2024; Ord. 3262 § 6, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.140 Appeal of Notice and Order.

A. Any recipient of a Notice and Order may contest that there is a violation of this Code, its adopted codes or State codes or that he or she is the responsible person by filing a written request with the Code Compliance Officer within fifteen (15) days from the date of issuance of the Notice and Order.

B. Any appeal of a Notice and Order shall include a detailed written explanation as to the grounds for appeal of the Notice and Order. Any appeal shall be limited to such written grounds.

C. Hearings on appeals of Notice and Orders shall be conducted pursuant to Section 1.10.200. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.150 Recording of pendency of abatement proceedings.

A. Notice of pendency.

1. Whenever the county institutes a judicial action or proceeding to enforce a land use ordinance, a notice of pendency of the action or proceeding may be filed with the county recorder's office. The notice may be filed at the time of the commencement of the action or proceeding and upon recordation of the notice, shall have the same effect as a notice recorded in compliance with Section 405.20 et seq. of the California Code of Civil Procedure, as amended.

2. Upon motion of a party to the judicial action or proceeding, the notice of pendency may be vacated upon an appropriate showing of need therefore by an order of a judge of the court in which the action or proceeding is pending.

B. Notice of pendency of administrative Proceedings

1. Whenever a notice and order has been issued pursuant to this ordinance, the Code Compliance Officer may record a notice of pendency of administrative proceedings with the office of the county recorder and shall notify the owner of the property of such action pursuant to Section 1.10.110.

2. The notice of pendency of administrative proceedings shall describe the real property, shall set forth the non-complying conditions, and shall state that all current or subsequent owners of the property may be liable for abatement costs pertaining to any violation and that the abatement costs may be affixed as a lien and special tax assessment on the real property.

3. A release of notice of pendency of administrative proceedings may be recorded after the Code Compliance Officer has confirmed that each violation described in the notice of pendency of administrative proceedings has been abated and all related abatement costs due have been reimbursed to the county.

4. If a notice of pending nuisance abatement proceeding is

recorded, the Code Compliance Officer shall serve on the record owner of the property a notice of final disposition when the nuisance abatement proceeding has been completed, including any appeals and the completion of any work necessary to abate the nuisance. If the work to abate the nuisance is performed at county expense, the notice of final disposition need not be issued until those costs have been paid or a lien for those costs has been recorded. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2, 2023; Ord. 3195 § 1, 2012; Ord. 2668 § 5, 2006; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.152 Notice of Violation Procedure.

REPEALED (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005)

1.10.153 Notice of Violation Penalty.

REPEALED (Ord. 3195 § 1, 2012; Ord. 2667 §§ 1, 2, 2005; Ord. 2612 § 2, 2005)

1.10.154 Administrative Review of Notice of Violation. REPEALED (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005)

1.10.160 Failure to pay penalties.

A. The failure of any owner or responsible person to pay the administrative penalties or abatement costs assessed by a Notice and Order within the time specified on the NAO may result in the matter being referred to the County Counsel to file a civil action with the applicable court.

B. Any owner or responsible person who fails to pay to the County any penalty or abatement costs imposed pursuant to this Chapter on or before the date that penalty or abatement costs are due also shall be liable for the payment of a onetime late payment charge in the amount of one hundred and twenty-five dollars (\$125.00), plus interest at the maximum rate permitted by law.

C. The payment of any administrative penalty or abatement costs shall not excuse or otherwise provide any defense to the continued violation of any provision of this Code. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2,(part), 2023; Ord. 3195 § 1, 2012)

1.10.162 Administrative Penalty on Notice and Order. REPEALED (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005)

1.10.170 Effect of failure to comply with Notice and Order.

A. Following the issuance of a Notice and Order, and continuing until either the action is overturned, or any applicable abatement is completed and any abatement costs and penalties are paid, no permit or other entitlement shall be approved, except, if penalties and abatement costs are paid, a permit necessary to correct a violation, or to respond to an Act of God, a health or safety condition, or an unintended disaster, under any provision of this Code for any use, structure, or activity on the same parcel. Following the expiration of the time period to appeal a Notice and Order, the enforcement officer shall inform all County departments with enforcement authority over provisions of this Code of this restriction.

B. After the issuance of a Notice and Order for a no-permit violation for a use, structure, activity or condition that cannot be returned to the pre-violation state, if a permit application to correct the violation is denied, the owner and/or other responsible person shall be prohibited from obtaining any permit or other entitlement under any provision of this Code for the parcel, except, if applicable penalties and abatement costs are paid, a permit or entitlement necessary to respond to an Act of God, a health or safety condition, or an unintended disaster, for a period up to five (5) years, as determined by the Code Compliance Officer. Immediately following the denial of a permit application, the enforcement officer shall inform all other County departments with enforcement authority over provisions of this Code of this prohibition, record a notice of action on the parcel, and serve a notice on the owner and any other responsible person. This prohibition shall apply to all successors-in- interest to the owner.

C. For a no-permit violation of Chapter 14.08 or Sections 17.44.050 or 17.45.050 of this Code, the owner shall be prohibited from obtaining any permit or entitlement under any provision of the Tuolumne County Ordinance Code made subject to this Chapter for the parcel, except, if applicable penalties are paid, a permit necessary to correct a violation, or to respond to an Act of God, a health or safety condition, or an unintended disaster, for a period up to five (5) years as determined by the Code Compliance Officer. An enforcement officer shall immediately inform the Community Development Director and Code Compliance Officer of a violation of any of the codes cited in this subdivision, and shall inform the Historic Preservation Review Commission

Demolition Review Committee, as established pursuant to Section 14.08.040 of this Code. Following the expiration of the time period to seek to overturn a Notice and Order, the enforcement officer shall inform all County departments with enforcement authority over provisions of this Code of this restriction, and record a notice of action on the parcel. This prohibition shall apply to all successors-in-interest to the owner. In addition, for a no-permit violation of Chapter 14.08, following the expiration of the time periods to seek to overturn a Notice and Order, the department head shall file a complaint with the Contractor's State License Board against any contractor or contracting company involved with the violation.

D. Nothing in this Section shall prohibit the issuance of a permit or entitlement that is separate and entirely unrelated to the violation(s) on the parcel. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2, (part), 2023; Ord. 3262 § 7, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.180 Hearing Board.

A. Board of Supervisors. The Board of Supervisors may act as the Hearing Board for any appeal of a Notice and Order pursuant to this Chapter.

B. Hearing Board. There is established a hearing board to be known as the "Code Compliance Hearing Board" whose subject matter jurisdiction shall be over appeals of NAOs pursuant to this Chapter.

1. The Hearing Board shall consist of three members who shall be County residents appointed by the Board of Supervisors. Effort shall be made to appoint individuals with experience in applying legal principles and/or law enforcement experience.
2. Terms. The term of office of each member shall be for three (3) years and until the appointment of his/her successor.
3. Vacancies and removal.
 - i. Vacancies on the Hearing Board shall be filled as set forth in Subsection (B)(1) for the unexpired term. A vacancy on the Hearing Board shall occur automatically on the happening of any of the following events before the expiration of the term:
 - (a) Removal of the incumbent;
 - (b) Death or resignation of the incumbent;
 - (c) The incumbent's ceasing to be a County resident; or

(d) The incumbent's absence from three consecutive meetings or his/her absence from four meetings in any one calendar year.

- ii. The Code Compliance Officer shall certify the happening of a vacating event to the Board of Supervisors. The Board of Supervisors may waive a vacating event for any member.

4. Officers. Annually, the Hearing Board shall elect a chair from its members, and any other officers from its members as is necessary to conduct its business. The officers shall serve a term of one year.

5. The Hearing Board shall adopt rules for the transaction of its business and shall keep a record of its transactions, findings, determinations and decisions, which records shall be public records. All meetings of the Hearing Board are subject to the Ralph M. Brown Act.

6. A majority of the authorized positions of the Hearing Board constitutes a quorum for the transaction of business. No act of the Hearing Board shall be valid unless a majority of the members present concur therein, except as otherwise required by state law.

7. Compensation. The members of the Hearing Board shall serve without compensation but may receive such actual and necessary expenses as are incurred in carrying out their duties.

8. Legal Counsel. The County Counsel's Office shall provide legal counsel to the Hearing Board as needed in furtherance of its duties under this Chapter. (Ord. 3262 § 8, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.190 Hearing Board's authority.

The Hearing Board is authorized to:

- A. Conduct hearings on appeals of NAOs;
- B. Issue subpoenas;
- C. Receive evidence;
- D. Administer oaths;
- E. Rule on questions of law and the admissibility of evidence; and
- F. Prepare a record of the proceedings. (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.200 Hearing procedure; fees.

A. An appeal request shall be deemed filed upon receipt of a written appeal request by the

Code Compliance Officer and the payment of any hearing fee, which may be established by resolution of the Board of Supervisors, within the specified time frame. Any hearing fee shall not exceed the reasonable cost to the County of a hearing.

B. The enforcement officer shall prepare a hearing report, under the direction of the Code Compliance Officer, including investigative observations, permit history about the parcel or condition, enforcement efforts and a description of the violation(s). Copies of the hearing report shall be provided to the Hearing Board and person requesting the hearing at least five (5) days prior to the hearing date.

C. The hearing before the Hearing Board shall be set for a date that is not less than fifteen (15) days from the date of hearing request, and in the instance of a Summary Abatement pursuant to Section 1.10.230, within 90 days of the summary abatement activities. The owner and/or responsible person requesting the hearing shall be notified of the time and place set for the hearing at least fifteen (15) days prior to the date of the hearing.

D. The Hearing Board shall only consider evidence that is relevant to the hearing matter.

E. The owner or responsible person shall be given the opportunity to testify and present witnesses and evidence at the requested hearing, or Summary Abatement hearing pursuant to Section 1.10.230.

F. The failure of the owner, responsible person, or an authorized representative, to appear at any properly noticed hearing shall constitute a failure to exhaust administrative remedies. Failure to appear at the hearing shall not affect the proceedings, the hearing will proceed, and all matters will be resolved without the participation of the person s provided notice of the hearing.

G. Failure to raise any issue at the hearing will be considered a waiver of that issue, and the County will contend it cannot be raised in any judicial review or enforcement proceeding or action.

H. Any documents submitted by the County shall constitute prima facie evidence of the respective facts contained in those documents

I. At least ten (10) days prior to the date of the hearing, the person requesting the hearing, shall be provided with copies of the NAO, reports and other documents submitted or relied upon by the County. No other discovery is permitted. Formal rules of evidence shall not apply.

J. Except as provided herein, Government Code section 11513 shall apply to the hearing and the term "respondent" shall refer to the owner and/or other party appearing in response to the notice of hearing. Official notice shall be taken of any fact which appears in any of the official records of the County or any of its departments, and of any fact in the same manner as is judicial notice pursuant to Evidence Code sections 451, 452, 453, 454, 455 and 456. The Hearing Board may question witnesses.

K. Members of the Hearing Board may inspect the parcel prior to or during the hearing. Members of the Hearing Board shall state for the record during the hearing, the material facts observed and the conclusion(s) drawn from any inspection.

L. The Hearing Board may continue the hearing and request additional information from the County or the person requesting the hearing prior to issuing a written decision.

M. The County shall establish the existence of a violation by a preponderance of the evidence.

The oral proceedings at all hearings shall be reported electronically by a tape recorder provided by the County, and under the control of the Hearing Board. Any party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999)

1.10.210 Hearing decision; Final abatement order.

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Board shall make a determination on the appeal and direct the Code Compliance Officer to draft a written Final Abatement Order for the Chair's signature within ten (10) days of the date of the hearing. The Final Abatement Order shall include the factual and legal issues presented, the Hearing Board's determination and the reasons for that determination.

B. If the Hearing Board determines that one or more violations exist, the Final Abatement Order shall also contain the following provisions:

1. An order requiring the owner and/or other responsible person in violation to commence abatement of the violation(s), not later than fifteen (15) days after the decision is final, and to complete abatement within such time as specified by the Hearing Board, and describing the action to be taken to abate the violation;

2. An order authorizing the County to physically abate the violation if it is not timely abated by the owner and/or other responsible person;
3. An order for the owner and/or other responsible person in violation to pay all abatement costs and penalties imposed by the Notice and Order; and
4. If requested by the County prior to the hearing, an order directing payment of the County's attorneys' fees, which payment may be allocated among multiple parties, if any.

C. If the Hearing Board determines there has been no violation, the Final Abatement Order shall also contain the following provisions:

1. An order directing the department head to remove any stop work order issued pursuant to the Notice and Order; and
2. If the County requested attorneys' fees prior to the hearing, a notice that if attorneys' fees or costs are claimed by the prevailing party, a statement of any fees and costs shall be served on the Code Compliance Officer within ten (10) days of service of the Final Abatement Order.

D. The Final Abatement Order may not be reconsidered by the Hearing Board, except to correct clerical errors or noncompliance with explicit provisions of this Chapter. Reconsideration must be requested of the Hearing Board within ten (10) days of service of the Final Abatement Order, and a copy served on the other party. Only one such request may be made. If the request is not timely received, the Final Abatement Order may not be reconsidered. The Hearing Board shall either deny the request, or issue an amended Final Abatement Order incorporating any changes required by the reconsideration, which shall be subject to the procedures in this subdivision.

E. The Hearing Board shall deliver the Final Abatement Order, and the record of the proceedings, including the audio tape of testimony, to the clerk of the Board of Supervisors who shall immediately forward a certified copy of the decision to the Code Compliance Officer and maintain the original Final Abatement Order and record of proceedings as a record of the Board of Supervisors.

F. Upon receipt of the Final Abatement Order and the record of the proceedings, the Board of Supervisors may adopt the Order on its consent calendar without further notice of hearing, or may set the matter for a de novo

hearing before the Board of Supervisors.

G. The person requesting the hearing shall be served with a copy of the Board of Supervisors' decision, mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. The Board of Supervisors' decision is final for purposes of Code of Civil Procedure section 1094.6 upon the date of mailing. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.215 Prevailing party attorney's fees and costs recovery. REPEALED (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.220 Abatement by County.

A. Wherever the required abatement is not completed within the time specified in the Notice Abatement Order pursuant to Section 1.10.100 (D) (1) of this chapter, the Code Compliance Officer may cause the completion of abatement activities as described in the Order.

1. The Code Compliance Officer, through the County Counsel's Office, is authorized to obtain any inspection or enforcement warrant necessary to enforce the Order.
2. The Code Compliance Officer, through the County Counsel's Office, is authorized to file a court action or proceeding to enforce the Order.
3. The Code Compliance Officer may refer the abatement to the department head with primary enforcement responsibility who shall cause the ordered abatement to be completed.
4. All departments of the County shall assist and cooperate with the Code Compliance Officer and any department head supervising the abatement.

Each department performing abatement activities shall, upon completion of the activity, report abatement costs to the Code Compliance Officer. (Ord. 3457 § 2 (part), 2024; Ord. 3262 § 9, 2014; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.230 Summary abatement.

A. If the department head determines, with concurrence by the Code Compliance Officer, there exists a violation, which is of such a nature as to be an imminent threat to the public health or safety, and if not abated would, during the

pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the notice and pre-abatement hearing provisions of this Chapter. When repair or removal of the condition is economically infeasible, abatement may include demolition of structures or destruction of real or personal property. Notwithstanding the foregoing, a reasonable effort shall be made to notify the owner of the parcel in advance of summary abatement.

B. Following a summary abatement action, hearing proceedings shall be commenced under this Chapter; except the Final Abatement Order as required in Section 1.10.210 shall not include an abatement order, but shall include a determination of whether the summary abatement satisfied the conditions in Subsection A.

C. Costs. The enforcement officer shall keep an itemized account of the costs incurred by the County in removing or isolating such condition or conditions. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered pursuant to Sections 1.10.250 and 1.10.260. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.240 Determination of abatement costs.

A. When abatement has been completed or when abatement costs have been incurred, the Code Compliance Officer shall serve a demand for payment of abatement costs which includes an itemized statement of the costs. If abatement costs are \$2,000.00 or more, the demand for payment shall provide the opportunity to request the assessment to be entered and paid in three annual installments, which request must be made in writing to the Code Compliance Officer within thirty (30) days.

B. Within thirty (30) days from the date of service of the demand, the owner and/or responsible person may submit a claim that: One or more abatement activities was not actually performed, or

1. Part or all the costs have been paid. The submission shall specify the ground(s) for the claim, and include all evidence on which the claim is based or it will not be considered.

C. If payment of costs is not made within thirty (30) days, and no timely claim is submitted, the costs set forth in the payment demand shall be conclusively presumed correct.

D. If a claim is timely submitted, the Code Compliance Officer shall review the evidence

submitted, make a determination on the issues raised, and serve a new demand for payment, revised as necessary. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.250 Lien procedure.

A. If payment of abatement costs is not received within thirty (30) days after service of the demand pursuant to Section 1.10.240, notice of the lien shall be served in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in the Union Democrat or other newspaper of general circulation in Tuolumne County in accordance with Government Code section 6062. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including the first day therein. Publication shall be made on each day on which the newspaper is published during the ten (10) day period.

B. After notice has been served, the lien shall be recorded in the County Recorder's Office and, from the date of recording, shall have the force, effect as recordation of an abstract of a money judgment pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The lien created has the same priority as a judgment lien on real property and continues in effect until released.

C. The lien shall identify:

1. The amount of the lien;
2. The County as the agency on whose behalf the lien is imposed;
3. Identification of the case number associated with the lien;
4. The date of the Final Abatement Order;
5. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
6. The name and address of the recorded owner of the parcel.

D. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in Subsection C shall be recorded by the County Counsel.

E. A lien may be foreclosed by an action brought by the County for a money judgment.

F. The County may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2, (part), 2023; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.260 Special assessment procedure.

A. If payment of abatement costs is not received within thirty (30) days after service of the demand pursuant to Section 1.10.240, the County Counsel shall serve notice by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

B. The assessment may be collected at the same time and in the same manner as ordinary County taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary County taxes. All laws applicable to the levy, collection and enforcement of County taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

C Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the County may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

D Notices or instruments relating to the special assessment shall be entitled to recordation. (Ord. 3432 § 2, (part), 2023; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.270 Right to judicial review.

A. Any person aggrieved by a decision of

the Board of Supervisors or a Final Abatement Order may obtain review of the decision by filing a petition for review with the Tuolumne County Superior Court in accordance with the timelines and provisions as set forth in Government Code or Code of Civil Procedure, as applicable.

B. Nothing contained in this Section shall be construed to prohibit any person from seeking prompt judicial review of a decision of a County official regarding the issuance, denial, suspension or revocation of a permit or license for an activity protected by the First Amendment of the United States Constitution as provided by Code of Civil Procedure section 1094.8. The County shall comply with all requirements described therein for prompt judicial review. (Ord. 3457 § 2 (part), 2024; Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999).

1.10.280 Civil action.

The County Counsel, by and at the request of the Board of Supervisors or County staff, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Code, including its adopted codes, or State codes as provided by law. The County Counsel, by and at the request of the Board of Supervisors or County staff, may institute an action in any court of competent jurisdiction to collect a civil debt owing to the County. (Ord. 3195 § 1, 2012; Ord. 2612 § 2, 2005; Ord. 2296 § 1 (part), 1999)

1.10.290 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this Chapter, except for conditions abated pursuant to Section 17980 of the Health & Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 25845.5. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the County. (Ord. 3195 § 1, 2012)

1.10.300 Attorneys' fees and costs.

A. In any action, administrative proceeding or special proceeding commenced by the County to abate a public nuisance, to enjoin violation of any provision of this Code, including its adopted

codes, or State codes or to collect a civil debt owing to the County, if the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

B. The County shall be considered a prevailing party entitled to attorneys' fees under Subsection (A) when it can demonstrate that:

1. Its lawsuit was the catalyst motivating the defendant to provide the primary relief sought;
2. The lawsuit was meritorious and achieved its result by "threat of victory;" and
3. The County reasonably attempted to settle the litigation before filing the lawsuit. (Ord. 3195 § 1, 2012)

1.10.310 Application of chapter to open code compliance cases.

A. Continued prosecution of any code compliance cases open as of the effective date of this Chapter, including collection of any penalties accrued prior to the effective date of this Chapter, shall proceed pursuant to the provisions of this Chapter as provided in this Section.

B. Any code compliance cases open as of the effective date of this Chapter shall be deemed to have been opened on the effective date of this Chapter for purposes of Section 1.10.040(D).

C. Section 1.10.120 shall apply to any code compliance case open as of the effective date of this Chapter which is not subject to a final Notice of Violation, Final Administrative Order, final Notice and Order or Final Abatement Order.

D. Any code compliance case open as of the effective date of this Chapter for which the property owner and/or responsible person has requested an appeal hearing shall proceed under hearing procedures pursuant to the provisions of this Chapter. If the Hearing Board determines that one or more violations exist, any penalties and abatement costs accrued prior to the effective date of this Chapter shall be imposed in addition to any other costs authorized by this Chapter.

E. Any code compliance case open as of the effective date of this Chapter which is subject to a final Notice of Violation, Final Administrative

Order, final Notice and Order or Final Abatement Order shall be subject to any penalties and abatement costs accrued prior to the effective date of this Chapter and shall be deemed subject to a Final Abatement Order pursuant to this Chapter to be recorded pursuant to Section 1.10.150.

F. Any code compliance case open as of the effective date of this Chapter which is not subject to a final Notice of Violation, Final Administrative Order, final Notice and Order or Final Abatement Order shall be processed in accordance with the provisions of this Chapter in the same manner as a new code compliance case and shall not be subject to any penalties and abatement costs accrued prior to the effective date of this Chapter. (Ord. 3195 § 1, 2012)

1.10.320 Violations of Chapter 17.67.

A. For any personal, non-commercial cannabis cultivated within an accessory structure or outdoors, the cultivator shall obtain an annual permit from the Community Development Department. The permit, and any renewal thereof, shall be issued after the completion of a code compliance inspection for cultivation in compliance with Chapter 17.67. Fees, as set forth in Chapter 3.40 of this Code, shall be paid to the Community Development Department prior to the processing of any permit application

B. Violations of Chapter 17.67 constitute violations impacting health and safety and shall be treated as ongoing violations pursuant to Section 1.10.070(A). Each plant in excess of that allowed by Section 17.67.050(A) shall be treated as a separate violation and each violation of section 17.67.050(B) shall be treated as ongoing and separate violations.

C. When a Notice and Order is issued for a violation of Chapter 17.67, the time within which to correct a violation shall not exceed five (5) days from the date the Notice and Order is served. For purposes of calculating the accrual of penalties, notwithstanding Section 1.10.070, each violation shall be calculated at \$1,000 for each violation not to exceed \$10,000 per day pursuant to Government Code section 53069.4(a)(2)(D)). If the violation(s) are abated within the 5-day period, only the first day's penalty shall be imposed. If the violation(s) are not abated within the 5-day period, the penalties accrued over five (5) days shall be imposed. In the instance of a summary abatement pursuant to Section 1.10.230, the penalties shall be limited to the maximum amount of penalties for the first day of the violation

D. Notwithstanding Section 1.10.140(A), written requests to appeal a Notice and Order for a violation of Chapter 17.67 shall be filed within five (5) days from the date the Notice and Order is served. (Ord. 3457 § 2 (part), 2024; Ord. 3432 § 2,(part), 2023; Ord. 3331 § 1, 2018; Ord. 3295 § 1, 2016)