

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. 09161 Ord. No. 1051
 Vote - Ayes: 5 Noes: _____
 Absent: _____
 Approved
 Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

_____ Requested Action Recommended
 _____ No Opinion
 Comments: _____

 CAO: _____

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

MARIPOSA COUNTY VIOLATION AMNESTY PERIOD

RESOLUTION NO. 09-161

WHEREAS, the Board of Supervisors has the authority to approve the recommended amnesty period; and

WHEREAS, the Board of Supervisors wishes to exercise this authority by adopting this VIOLATION AMNESTY PERIOD RESOLUTION; and

WHEREAS, it is favorable for the continued purpose of the Mariposa County Building Department to consent to an amnesty period to allow property owners with violations a specified period of time to commence the process of legalizing such violations; and

WHEREAS, the Board of Supervisors finds that the methodologies employed by staff in determining an amnesty period are appropriate; and

WHEREAS, the Board of Supervisors finds that the amnesty period set by this resolution does not exceed the reasonable timeframe for initiating the process to correct the building code violations; and

WHEREAS, The Clerk of the Board has caused notice of a public hearing to be duly given in accordance with the provisions of Government Code Section 66016; and

WHEREAS, for at least 10 days prior to the date for said hearing, there has been on file with the Clerk of the Board, data indicating the timeframe, or estimated timeframe, allowed without violation fees; and

WHEREAS, said public hearing has been duly and timely conducted and all persons desiring to be heard in this matter have been duly heard and this Board has considered all of the testimony presented during the hearing and the recommendation aforementioned, and said public hearing having been conducted.

NOW, THEREFORE, IT IS RESOLVED by the Board of Supervisors of Mariposa County, State of California, as follows:

1. The Board finds all the facts mentioned above to be true, and that it has jurisdiction to act on the subject of this Resolution.
2. This Board does hereby approve and adopt the recommended amnesty period set forth herein.
3. The amnesty period adopted by this Resolution shall be effective May 1, 2009 through August 1, 2009.
4. The purpose of this amnesty period is to allow property owners to legalize previously identified violations via the permit process without incurring any additional civil fees or penalties over and above those in place prior to the adoption of the Violation Ordinance. Further, it will allow property owners who self-report existing violations on their property, which have not previously been reported to the Building Department, to initiate the process of legalizing such violations without incurring any civil penalties or fees over and above those required for securing a building permit.
5. Pursuant to the Public Resources Code Section 21080(b) (8), it is proposed to dispense with the preparation or consideration of any documents otherwise required by the California Environmental Quality Act (CEQA).
6. The Clerk of this Board shall cause a Notice of Exemption to be filed with the County Clerk.

PASSED and ADOPTED by the Board of Supervisors of the County of Mariposa, State of California this 7th day of April, 2009 by the following vote:

AYES: ABORN, TURPIN, BIBBY, CANN, ALLEN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE



BRAD ABORN, Chairperson
Board of Supervisors

ATTEST:

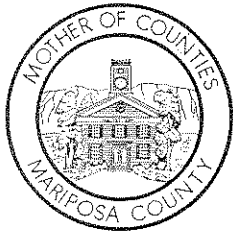


MARGIE WILLIAMS
Clerk of the Board

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN, CHAIR
JANET BIBBY, VICE CHAIR
LYLE TURPIN
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT III
DISTRICT II
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: FRED LUSTENBERGER, Building Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: PUBLIC HEARING to Waive Second Reading and Adopt Ordinance Creating Section 15.10.061 of the County Code to Create a Policy for the Handling of Violations and a Standard Penalty Schedule; and Adopt a Resolution Setting Amnesty Period (Continued from March 24, 2009)

RESOLUTION 09-161 and ORDINANCE 1051

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on April 7, 2009

ACTION AND VOTE:

11:23 a.m. Fred Lustenberger, Building Director;

PUBLIC HEARING to Waive Second Reading and Adopt Ordinance Creating Section 15.10.061 of the County Code to Create a Policy for the Handling of Violations and a Standard Penalty Schedule; and Adopt a Resolution Setting Amnesty Period (Continued from March 24, 2009)

BOARD ACTION: Fred Lustenberger presented the staff report and he reviewed the changes to the document that were made pursuant to the Board's direction on March 24th; and he advised that he will be bringing back a resolution for the Building Appeals Board. He responded to questions from the Board relative to starting the process for the amnesty period and relative to handling those who do not self-report; plans for advertising the amnesty period; addressing out-buildings that exceed the currently allowed 120 square feet; and dealing with structures that are legal, non-conforming. The public portion of the hearing was opened and there was no input. The public portion of the hearing was closed and the Board commenced with deliberations. (M)Bibby, (S)Cann, the second reading was waived and Ordinance No. 1051 was adopted as recommended. The Clerk of the Board read the title of the Ordinance into the record. Further discussion was held relative to dealing with out-buildings. Ayes: Unanimous. (M)Cann, (S)Allen, Res. 09-161 was adopted setting the amnesty period/Ayes: Unanimous. The hearing was closed.

Cc: Steve Dahlem, County Counsel
Chris Ebie, Auditor
File

FILED

**MARIPOSA COUNTY
NOTICE OF EXEMPTION**

APR 10 2009
KEITH M. WILLIAMS
MARIPOSA COUNTY CLERK

TO: County Clerk, County of Mariposa
P.O. Box 247
Mariposa, CA 95338

FROM: Mariposa County
Building Department
P.O. Box 1268
Mariposa, CA 95338

Courtney Prognei
COURTNEY PROGNEI

Project Title: Resolutions approving Building Department Violation Policy and Permit Expiration Date

Project Address: Countywide

**Description
of Project:**

A proposed resolution to change permit expiration dates and amend violation fees of the Building Code for which permits are sought in Mariposa County. The proposed new expiration dates of permits would apply to all new building projects applied for 30 days after receiving Board approval. The proposed new violation fees of permits would apply to all new violations for which permits are applied for 30 days after receiving Board approval.

Name of Public Agency Approving Project: Mariposa County Building Department

Name of Person (Applicant) Carrying Out Project: Mariposa County Building Department pursuant to Section 15.10.040 of the Mariposa County Code.

Exempt Status: Categorical Exemption, Section 21080(b)(8) (b)3, CEQA Guidelines

Reason Why

Project Is Exempt: The proposed resolution is to approve the new violation fee schedule and new permit expiration dates. The proposal does not have the potential to significantly affect biological or cultural resources, public roads, land uses, public services or other environmental values. The proposal is therefore categorically exempt from the requirements of CEQA.

Lead Agency Contact Person: Fred Lustenberger, Building Director

Phone Number: (209) 966 - 3934

Mariposa County, Building Department
by

[Signature]
Fred Lustenberger
Building Director

5-10-09
Date



State of California—The Resources Agency
 DEPARTMENT OF FISH AND GAME
2009 ENVIRONMENTAL FILING FEE CASH RECEIPT

RECEIPT#	374683
STATE CLEARING HOUSE # (If applicable)	

SEE INSTRUCTIONS ON REVERSE. TYPE OR PRINT CLEARLY

LEAD AGENCY	Mariposa County Building Dept			DATE	4/10/09
COUNTY/STATE AGENCY OF FILING	Mariposa			DOCUMENT NUMBER	
PROJECT TITLE	Resolutions approving Building Dept Violation Policy				
PROJECT APPLICANT NAME	Mariposa Co. Building Dept			PHONE NUMBER	209 916 3934
PROJECT APPLICANT ADDRESS	CITY	STATE	ZIP CODE		
P.O. Box 1268	Mariposa	CA	95335		

PROJECT APPLICANT (Check appropriate box):

Local Public Agency
 School District
 Other Special District
 State Agency
 Private Entity

CHECK APPLICABLE FEES:

Environmental Impact Report
 \$2,768.25
 \$ _____

MARIPOSA COUNTY ORDINANCE NO. 1051

*Original
ordinance filed
w/ordinance
file*

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.

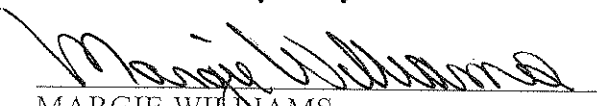
PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 7TH day of April, 2009 by the following vote:

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