



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Planning Department

FOR THE BOARD MEETING OF: February 11, 2014

SUBJECT: Zoning Code Update Workshop – Code Enforcement

DEPARTMENTAL RECOMMENDATION: Conduct a workshop regarding the draft Zoning Code Update pertaining to Code Enforcement, and provide direction to staff.

SUMMARY DISCUSSION: One of the follow-up actions from the 2001 General Plan was to update the Zoning Code. Staff worked with Willdan to prepare updated Zoning Code sections, which were provided for review by the Board and the Planning Commission in a series of workshops between 2011 and 2013. Staff incorporated this input into a comprehensive Zoning Code update and prepared a related General Plan update,¹ and in May 2013 embarked on a robust community outreach effort to inform the public, stakeholders, community organizations, public agencies, and other interested persons and entities about the Update effort and solicit input. The Planning Commission reviewed the results of the outreach and provided input on October 30, 2013; recommendations from the Commission and staff were forwarded to the Board on December 3, 2013. At that workshop, the Board concurred with the majority of the recommendations, but directed staff to undertake additional research and return for three specific workshops, the first of which being Code Enforcement. The other two topics are (1) expanding the General Plan Update's approach to Digital 395 and (2) Special Event Permits, blighted buildings, and potentially community character zoning overlays, the latter contingent on the outcome of further Code Enforcement discussions.

Based on the Board's direction, staff has developed another version of the proposed Code Enforcement section for review (see attached). This version maintains the current policy under which staff responds to written complaints. If a violation is found to exist, the violator will be notified, and if the violation is not rectified, a Notice of Violation shall be issued, which may be appealed to a Code Enforcement Hearing Officer. Specified code enforcement responsibilities are proposed to be transferred to the office of County Counsel from the District Attorney. Penalties include a \$500/day fine, recordation and liens against the property, civil action, and prosecution as a misdemeanor or an infraction.

Per the Board's previous direction, staff discussed potential overlays with the various communities during the outreach effort. The purpose of these discussions included accommodating distinct community character within the context of strengthened code enforcement. Based on the Board's direction on December 3, 2013, staff request further direction about proceeding with a generic example overlay for the upcoming third workshop.

¹ Refer to <http://inyoplanning.org/GPandZoningUpdates.htm> for more details regarding the update effort, including the May 2013 version of the Zoning Code/General Plan update.

Next Steps

Once the Board provides direction regarding the specified topics in the upcoming workshops, staff plans to publish the next iteration of the Zoning Code/General Plan document and embark on environmental review in early spring, with final consideration later in the 2014. Additional opportunities for public input will be provided, and staff will continue to review and update the documents iteratively throughout the process.

ALTERNATIVES: The Board could direct staff to alter the approach to specific issues, or bring back specific issues for more in-depth consideration. Also, the Board previously instructed staff to work directly with itself and the Planning Commission on the update; the Board could instead direct staff to form a General Plan Advisory Committee.

OTHER AGENCY INVOLVEMENT: None directly; other County departments and/or outside agencies may be affected during implementation.

FINANCING: Resources from the County's general fund are being utilized for staff to process the updated Zoning Code. Funds for Willdan to prepare the draft Code were allocated from geothermal royalties by operating transfer to the General Fund/Planning Department budget.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 2-6-14

Attachment: Draft Code Enforcement Section

PURPOSE AND ADMINISTRATION

Section 18.01.040. General Provisions

Application.

This section applies generally to all real and personal property within Inyo County ("County").

A. Every owner of real and personal property within the County is required to maintain such property in accordance with the provisions of this Title, and such owner shall be liable for violations of this Title regardless of any contract or agreement that the owner might have with a third party regarding the property.

B. Every legal occupant, lessee or other person with an interest in real property, with the exception of a property owner or a lender whose sole interest in the property is as security for the repayment of a debt, is required to maintain such property in the same manner as is required of the property owner. The duty imposed on a property owner shall, in no instance, relieve legal occupants, lessees, or other persons of their duties under this section.

Reference.

Whenever reference is made to any portion of this section, the reference applies to this section as adopted and any subsequent amendments or additions.

Nonexclusive remedies.

The remedies provided in this section are cumulative, and shall be in addition to any other remedies provided by law. Nothing in this section shall be deemed to prevent the County from commencing any other available civil or criminal proceeding to abate a nuisance under applicable provisions of state or other law.

Declaration of Purpose

Purpose.

The Board finds that the enforcement of this section and applicable state codes within the County is an important public service, critical to the protection of the public health, the improvement of the quality of life in the community, enhancement of public safety and the general welfare of the citizens. The Board further finds that a comprehensive code enforcement system that uses a combination of administrative and judicial remedies will substantially facilitate compliance with this section.

It is the direction of the Board that the enforcement philosophy for this section shall be to achieve voluntary compliance from the property owner(s) as the primary objective. Although "letter of the law" enforcement may become necessary from time to time, the Board prefers that a commitment to the "intent of the law" be the prevailing enforcement posture in the County. Thus, the Board adopts this section to:

- A. Provide a comprehensive method for the identification and abatement of certain nuisances within the County and to impose any costs of abatement against the owners of the offending properties as a personal obligation and/or as a lien against real property.
- B. Provide for the protection of life, limb, health, safety, property or welfare of the general public and occupants of, and neighbors to, properties or conditions constituting public nuisances.
- C. Provide the citizens of the County with an attractive community and protect property values.
- D. Allow the citizens of the County to actively participate in the community enhancement process.

Article III. Definitions

Definitions.

For purposes of this section, the following words shall have the following meaning, unless a different meaning is specifically provided for in this section.

“Building official” means the County official and his or her designated representative charged with enforcement of the County building code.

“County” means Inyo County.

“County Administrative Officer” means the County Administrator of the County or designated representative.

“Combustible materials” means materials which are readily ignitable, free-burning, or which will ignite through contact with flames of ordinary temperatures and includes combustible decorative materials, combustible fibers, combustible liquids, and combustible waste material as those terms are defined in the California Fire Code as adopted by the County.

“Complaint” means a written report, by any person or entity, of an alleged violation of this section or other applicable laws on the County proscribed form.

“Days” means calendar days unless otherwise specified.

“Demolish” means to destroy a building and to remove all debris and waste materials from the lot on which the building stood.

“Enforcement” means all efforts, following written complaint, to secure compliance or abatement. This may include review of plans and permit applications, response to complaints, citation of violations, and other legal process. Unless otherwise provided in this section, “enforcement” does not include inspections of existing buildings on which no written complaint or application has been filed, or require any effort to secure compliance as to such existing buildings.

“Code Enforcement Hearing officer” means an individual or individuals appointed by the County Administrative Officer, acting singularly or collectively, with the authority to conduct a hearing and following a hearing to affirm, modify or reverse an order of abatement as provided for and described in this section, in accordance with regulations that may be established by the Planning Director.

“Imminently dangerous” means that the condition of property or a building, if abated according to the procedures set forth in this section requiring notice and an opportunity for a hearing, may, during the pendency of those proceedings, subject the public, occupants, or neighbors, or the property of these persons to potential harm of a serious nature.

“Legal occupant” means any person over one year of age lawfully living, sleeping, cooking or eating in, or otherwise having actual legal possession of a dwelling unit.

“Mediation” means a the process following receipt of a written complaint during which the Planning Director works with the property owner to informally resolve issues relating to alleged violations of this section or other applicable laws.

“Notice of administrative violation” means the notice issued by the Planning Director or his or her designated representatives, which may include, but is not limited to the code enforcement officer.

“Nuisance” means any nuisance defined pursuant to Part 3 of Division 4 of the Civil Code commencing with Section 3479, any other nuisance recognized at common law or in equity, or any nuisance as defined by this section.

“Occupy” means to reside or dwell in for purposes of shelter, sleeping or cooking.

“Order of abatement” means any final order or notice requiring abatement of a nuisance pursuant to this section or other applicable law issued by the Planning Director.

“Personal property” means temporary or moveable property as distinguished from real property.

“Property” means all real property, including, but not limited to, the entire premises, parking lots, sidewalks, gutters, driveways, walkways and shall include any building and structure and improvement thereon located on such property.

“Property owner” or “owner” means any person owning real property as shown on the last equalized assessment roll for County taxes.

“Public nuisance” includes, but is not limited to, a nuisance that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or any public nuisance as defined by state law or this section.

“Reasonable time(s)” means between the hours of eight a.m. and five p.m., Monday through Friday, inclusive, unless otherwise required by: (1) an emergency impacting the safety or preservation of life or property; or (2) the fact that the alleged violation of this section or other applicable laws only occurs at some other hour or on a weekend

“Registered,” with respect to vehicles, means a current, valid California Registration for a vehicle conforming to California Vehicle Code Sections 4000 or 9840 et seq.

“Rental dwelling unit” means a dwelling unit rented for any tenure, type or price.

“Rubbish” means and includes castaway furniture, packing materials, construction waste, dry manure, debris, tree or shrub trimmings, or other matter that could constitute or increase a fire hazard.

“Serve” means placement of a document directed to the property owner in the United States mail and is deemed complete on deposit in the mailbox.

“Sheriff” means the elected Sheriff of the County or designated representatives

“State housing law” means Division 13, Part 1.5 of the Health and Safety Code (commencing at Section 17910) and Article 1 (commencing at Section 1) of Chapter 1, Title 25 of the California Code of Regulations.

“Tenant” means the person lawfully occupying a building or portion thereof, or a dwelling unit or rental dwelling unit.

“Vehicle” means a device by which any person or property may be propelled, moved or drawn upon a highway, road or body of water and, for the purposes of this section, shall include, but not be limited to, automobiles, trailers, recreational vehicles, campers, boats, motorcycles and mopeds, whether or not such vehicles are registered as required by law.

Administration and Enforcement

Code interpretation.

The Planning Director shall have the power to render interpretations of this section and its regulations in order to clarify the application of its provisions. Such interpretations shall conform to the intent and purpose of this section.

Adoption of code enforcement regulations.

The Planning Director is authorized to adopt and enforce reasonable regulations consistent with the purposes, intent and express terms of this section as he or she deems necessary to implement such purposes, intent, and express terms. No regulation or amendment thereto, shall be enforced or become effective until thirty days following the date on which the proposed regulation or amendment has been filed with the Board Clerk. At the discretion of the Planning Director or County Administrative Officer, or the request of any member of the Board of Supervisors, any regulation promulgated by the Planning Director may be brought to the Board of Supervisor for approval.

Investigation following receipt of a written complaint

Following receipt of a written complaint, the complaint shall be investigated by the Planning Director or his designee.

Authority to enter and inspect.

A. Inspections. To the extent allowed by law, the Planning Director or his designee, including but not limited to the Code Enforcement Officer, may enter and inspect any building or property whenever a written complaint has been filed with the Planning Director alleging a violation of the provisions of this Title. The Planning Director or his designee, including but not limited to the Code Enforcement Officer, may make any examinations and surveys as necessary in performing these inspections as permitted by law and consistent with legally recognized privacy rights. These duties may also include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be conducted in a reasonable manner.

B. Right of Entry shall be provided as specified by Chapter 1.08. If such a building or property is unoccupied, the Planning Director or his designee, including but not limited to the Code Enforcement Officer shall make a reasonable effort to locate the owner or other persons having charge of control of the building or property and request entry.

No person authorized to enter buildings shall enter any dwelling between the hours of six p.m. of any day and eight a.m. of the succeeding day, without the consent of the owner or occupants of the dwelling, nor enter any dwelling in the absence of the occupants without a proper written order executed and issued by a court of competent jurisdiction.

Process following determination of Violation:

If a violation is determined to exist, the Planning Director shall notify the owner of the property involved orally to abate the violation.

If thirty (30) days after oral notification the violation continues, the Planning Director shall issue and serve a written notice of administrative violation (Notice) to the property owner requiring correction of the violation within thirty (30) days.

If the violation is continuing thirty-five (35) days after the Notice was served, the Planning Director shall issue and serve a final notice (Final Notice) to the property owner to correct the violation within thirty (30) days.

If the violation continues thirty-five (35) days after the Final Notice was served the Planning Director will issue and serve an Order of Abatement. The Order of Abatement shall be deemed final if not appealed to the Code Enforcement Hearing Officer.

Within fifteen (15) days following service of the Order of Abatement, the cited property owner may file a written appeal with the Planning Director setting forth all reasons why the Order of Abatement should be modified or reversed.

1. The designated Code Enforcement Hearing Officer will be provided a copy of the Appeal by the Planning Director within 10 days of receipt.
2. The hearing will be set by the Hearing Officer within 30 days, unless a longer time is requested by the cited property owner and agreed to by the Planning Director and Hearing Officer.
3. The Planning Director or designee has the burden of proving a nuisance existed when the Order of Abatement was served.
4. The Hearing Officer may give consideration to the cited property owner's elimination of the nuisance subject to the Order at the time the hearing commences.
5. The cited property owner may present written and oral evidence to show there was no nuisance at the time the Order of Abatement issued and/or the hearing commenced.
6. The rules of evidence shall not apply to the hearing.
7. If the Hearing Officer finds a nuisance exists and no extraordinary circumstances warrant additional time to correct the nuisance, the cited property owner will be required to pay a \$1,000.00 fine.
8. If the Hearing Officer finds that additional time is warranted to correct the nuisance, the Hearing Officer shall identify a reasonable period of time to correct the violation, which shall be ordered by the Hearing Officer. If the violation is not corrected within the specified period of time, the Hearing Officer shall issue a ruling.
9. Enforcement of an Order of Abatement is stayed pending the Hearing Officer's ruling, which shall issue within 30 days of the close of the hearing.
10. The Hearing Officer's ruling shall be a final and binding decision with regard to the Order of Abatement.

Continuing Violations

A continuing violation of an Order of Abatement or following a Hearing Officer's ruling is deemed a separate violation for each and every day that such violation exists and is subject to a fine of \$500 for each day.

Continuing violations that exist following an Order of Abatement or following modification or affirmance by a Hearing Officer:

1. May be caused to be abated by the County, and any costs and/or reasonable administrative fees charged to the property owner, or failure to pay a lien will be recorded against the property;
2. Any fine and/or cost of abatement will be recorded as a lien against the property;
3. May be directed to the County Counsel to be pursued civilly ; and/ or
4. May be directed to the District Attorney for prosecution as a misdemeanor or an infraction subject to the District Attorney's discretion.

Remedies

All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person, hereunder, shall not relieve such person from the responsibility of correcting prohibited conditions or removing prohibited buildings, structures or improvements, nor prevent the enforced correction or removal thereof.

Authority to issue criminal citations and make arrests.

In performing his or her duties under this section, the Sheriff and designated representatives shall have the authority and impunities of a public officer and employee as set forth in Penal Code Section 836.5, which include, but are not limited to: (1) making arrests without a warrant whenever he or she has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his or her presence, which is a violation of this Title or applicable state codes; and (2) issuing field citations as a substitute for physical arrest.

Disclaimer of liability.

Nothing in this section shall be construed as requiring the County to enforce its prohibitions against all properties that may violate such prohibitions. The County envisions that this section will be enforced, in the County's prosecutorial discretion, as resources permit. This section is not intended to and shall not be construed or given effect in a manner that imposes upon the County or any officer or employee thereof a mandatory duty of care towards persons and property within or without the County so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Confidentiality in connection with Complaints.

The County shall take all reasonable steps to ensure that the identity of any person making a written Complaint to the County concerning a violation of this section or other applicable laws shall remain confidential. However, no enforcement action shall be taken beyond issuance of a notice to abate unless: (1) the complaining witness agrees to be identified upon request of the responsible party; or (2) the Planning Director or his designee, including but not limited to the Code Enforcement Officer has developed sufficient independent evidence to take further action.