



AGENCY: City of Fort Bragg
MEETING DATE: September 12, 2022
DEPARTMENT: Community Development
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AGENDA ITEM SUMMARY

TITLE:
Receive Report and Provide Recommendations on Proposed Changes to Title 1 of the Fort Bragg Municipal Code

ISSUE:
 The Fort Bragg Municipal Code is the City’s guiding document to regulate government process and oversight. The last update to Title 1 of the Fort Bragg Municipal Code (FBMC) was over ten years ago. Staff initiated a review of Title 1 to ensure that the City remains in alignment with State regulations.

The recommended changes to Title 1 will update administrative procedures involving process of appeals, administrative hearings, and administrative citations. The addition of the Administrative Citation Ordinance allows the City to take a more supportive route towards code compliance by establishing a system that is consistent and less punitive. The recommended changes to Title 1 play an important role in the City’s code enforcement activity, but will be applicable to many other department functions as well.

The recommended changes to existing chapters and the addition of Chapter 1.12 will clarify any grammatical issues, formalize existing procedures and provide a firm foundation to create more proactive code enforcement activity. The table below summarizes the proposed amendments to Title 1.

Proposed Amendments to FBMC Title 1	
[Document with Track Changes is Attachment 6 to Report]	
Chapter 1.04	
FBMC Section	Proposed Change(s)
1.04.010 Definitions	<ul style="list-style-type: none"> • Revising the following definitions for the sake of clarity, modernization, or grammatical errors: <ul style="list-style-type: none"> ○ Central Business District or Central Traffic District ○ Holidays ○ Written
1.04.060 Misdemeanor Violations	<ul style="list-style-type: none"> • Adding section 1.04.060 to Chapter 1.04 <ul style="list-style-type: none"> ○ This section establishes the authority to constitute a violation of the Municipal Code as a Misdemeanor. ○ Originally this was in section 1.12.010 (A)
Chapter 1.06	
Chapter Table of Contents	<ul style="list-style-type: none"> • Section renumbering
1.06.030 Definitions	<ul style="list-style-type: none"> • Including “Chapter 1.12” in the description of the section at the start of section 1.06.030.

	<ul style="list-style-type: none"> Adjusting the definition of “Responsible Party or Responsible Parties,” to include “or any party with a legal interest in the affected property”
1.06.060 Hearing and Hearing Officer	<ul style="list-style-type: none"> Adding “And Hearing Officer” to the title of the section so that it will be called “Hearing and Hearing Officer” Replacing 1.06.060 (B) with subsection titled “Powers of the Hearing Officer.” <ul style="list-style-type: none"> Describes the duties and powers of the Hearing Officer Renumbering subsection titled “Evidence” to 1.06.060 (C).
1.06.080 Hearing Procedures and Rules	<ul style="list-style-type: none"> Replacing existing 1.06.080 with a new section titled “Hearing Procedures and Rules.” <ul style="list-style-type: none"> Lists the powers of the Hearing Officer and the details of the proceedings.
1.06.090- 1.06.150	<ul style="list-style-type: none"> Renumbering existing sections to account for the replacement of 1.06.080 with a new section <ul style="list-style-type: none"> Changing Section “Decision” from 1.06.080 to 1.06.090 Changing Section “Decision in Writing” from 1.06.090 to 1.06.100 Changing Section “Payment and Collection of Penalties” from 1.06.100 to 1.06.110 Changing Section “Defaults and Uncontested Cases” from 1.06.110 to 1.06.120 Changing Section “Cost Accounts” from 1.06.120 to 1.06.130 Changing Section “Imposition of Liens or Special Assessments” from 1.06.130 to 1.06.140 Changing Section “Judicial Review of Decision of Hearing Body or Hearing Officer” from 1.06.140 to 1.06.150
1.06.090 Decision	<ul style="list-style-type: none"> Grammatically restructuring subsection B for clarity. Adding reference to Chapter 1.12 in subsection D.
1.06.120 Defaults and Uncontested Cases	<ul style="list-style-type: none"> Adding language that addresses defaults and uncontested cases as it relates to the right to a hearing.
1.06.140 Imposition of Liens or Special Assessments	<ul style="list-style-type: none"> Adjusting subsection D to remove “any penalty imposed pursuant to this section, and” to account for the new chapter that details the penalties.
Chapter 1.08	
1.08.010 Appeal of Administrative Decision	<ul style="list-style-type: none"> Adjusting the title to “Appeal of Administrative Decision and Citation” Adding language to subsection A to include administrative citations, references to Chapter 1.12, and specifying who has the ability to appeal. Adjusting sentence structure in subsection B, and adjusting the number of days from the date of service of any determination, action, or decision from 15 days to 10 days.

	<ul style="list-style-type: none"> • Eliminating current subsection C that details the hearing fee requirements because the fees are established in other sections and in the Fee Schedule. • Subsection D is changing to subsection C. • Removes the language about an appeal processing fee because it's established elsewhere, and adds "decision" to specify that appeals of administrative decisions will need to be filed in a timely manner in order to not have the right to appeal waived.
1.08.030 Procedure for a Request for Hearing	<ul style="list-style-type: none"> • Adjusting title to "Procedure for a Request for Hearing/Appeal of an Administrative Citation" • Renumbering subsections to account for new sections replacing subsection A through D. <ul style="list-style-type: none"> ○ Sections A through D now describe the process, timeframes, and the authority of City staff for appeals of administrative decisions or administrative penalties. ○ Subsection E (FKA subsection B) adjusting the number of calendar days that an appeal hearing will be set within. ○ Subsection F (FKA subsection C) adding a reference to section 1.06.120. ○ Subsection G (FKA subsection D) adding language about the ability of the Hearing Officer to grant a hardship waiver or whether the City can request reimbursement of the costs of the Hearing Officer's services. Also specifying that the Hearing Officer's decision shall be final.
Chapter 1.12	
1.12.010 Penalty	<ul style="list-style-type: none"> • Changing the title of the Chapter from "General Penalty" to "Administrative Citations and Penalties." • Removing the existing section 1.12.010 titled "Penalty" because the section language was moved to 1.04.060. • Turning section 1.12.010 into the "Findings and Purpose" of the Chapter.
1.12.020 Citation	<ul style="list-style-type: none"> • Adding section 1.12.020 titled "Citation." <ul style="list-style-type: none"> ○ Stating that this Chapter will be referred to as the "Fort Bragg City Administrative Citation Ordinance."
1.12.030 Definitions	<ul style="list-style-type: none"> • Adding section 1.12.030 titled "Definitions." Section defining the following terms in the context of the Chapter: <ul style="list-style-type: none"> ○ "Administrative Costs" ○ "Administrative Code Enforcement Remedies" ○ "Citation" or "Administrative Citation" ○ "Department" ○ "Enforcement Officer"
1.12.040 Scope of Chapter	<ul style="list-style-type: none"> • Adding section 1.12.040 titled "Scope of Chapter" to indicate the who and when can utilize the Chapter and the exceptions to the uses of the Chapter.
1.12.050 Nonexclusively and Election Proceedings	<ul style="list-style-type: none"> • Adding section 1.12.050 titled "Nonexclusively and Election Proceedings" to establish that it's at the discretion of the City to what extent and in what cases the enforcement proceedings established in this Chapter and the Code will be utilized.

1.12.060 Recordation of Notice of Violation	<ul style="list-style-type: none"> Adding section 1.12.060 titled “Recordation of Notice of Violation” establishing the process of recording violations with the Mendocino County Recorder.
1.12.070 Administrative Penalty; Amounts.	<ul style="list-style-type: none"> Adding section 1.12.070 “Administrative Penalty; Amounts” specifying the process for citing administrative penalties in connection with administrative citations, the amount limits that administrative penalties can be cited within, and the ways that citations/penalties can be modified.
1.12.080 Citation for Violation of the Code	<ul style="list-style-type: none"> Adding section 1.12.080 “Citation for Violation of the Code” establishing how a citation will be issued, the appropriate evidence to substantiate the administrative citation, and the repercussions of a violation going uncorrected.
1.12.090 Service Procedures	<ul style="list-style-type: none"> Adding section 1.12.090 “Service Procedures” establishing the way that administrative citations will be served on Responsible Parties.
1.12.100 Appeal of an Administrative Citation	<ul style="list-style-type: none"> Adding section 1.12.100 “Appeal of an Administrative Citation” to indicate that the appeal of administrative citation will fall under the same procedures set forth in Chapter 1.08.
1.12.110 Hardship Waiver	<ul style="list-style-type: none"> Adding section 1.12.110 “Hardship Waiver” to indicate when a Responsible Party may seek a financial hardship waiver and what information would need to be submitted in order for the City to determine whether a waiver will be granted.

ANALYSIS:

Misdemeanors vs. Infraction Penalties

California Government Code 36900 states “Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction.”

The City of Fort Bragg Municipal Code formalized this authority previously in section 1.12.010 titled, “Penalty.” The exact language was moved to section 1.04.060. This section specifies that all violations will constitute a misdemeanor unless expressly provided otherwise, and will be at the discretion of the City Attorney to be charged and prosecuted as an infraction. The section goes on to list the limits of the fine amounts. The proposed Administrative Citation Ordinance describes in greater detail the authority and limitations that the City has to impose these citations in section 1.12.070.

Current code enforcement fees are established in the Fee Schedule. These fees were calculated by estimating the associated staff time to process different types of cases. This means that under the established fees, the lowest level violation (Type 1 violations) is a first time penalty amount of \$204. After discussion of the City’s code enforcement efforts, staff determined that the penalty amount thresholds for infractions are more appropriate for working with citizens towards compliance. Based on this decision, I have put together a

Schedule of Administrative Penalties (**Attachment 1**) that contains the description of how the amounts were determined.

Administrative Citation

California Government Code 53069.4 is the State regulation that gives cities the authority to process administrative penalties for violations of the Code, and it says:

The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.

Currently, the administrative procedures for administrative penalties are dispersed in different chapters. However, the addition of the Administrative Citation Ordinance and the changes to administrative penalties will compile the information in a more appropriate location. Due to the proposed updates to Title 1, updates have been made to the template for the Notice of Violation (NOV) (**Attachment 2**). The Notice of Violation is often used to initiate the process to impose an Administrative Citation for violations of the Code. The administrative procedure for Administrative Citations will now be in Title 1. Attached is the template for an Administrative Citation (**Attachment 3**) that contains all of the required information as proposed by 1.12.080.

Hearing Procedures

In outlining the sections for Administrative Citations, Staff decided to update Title 1 sections related to Hearings and Hearing Officers. The recommended changes provide a code section for Fort Bragg citizens to refer to when going through the Administrative Citation process. In section 1.06.060, provisions are added to detail the powers and duties of the Hearing Officer during Hearing proceedings. Currently, the City Manager or the City Manager's designee is deemed the Hearing Officer.

Requesting to appeal an Administrative Decision or an Administrative Citation is detailed in Sections 1.08.010 and 1.08.030. Based on the City Council meeting on May 24, 2021, staff is requesting input on whether or not language should be added to section 1.08.010 to indicate that any interested citizen of Fort Bragg can appeal an Administrative Decision or Administrative Citation.

In the May 24, 2021 Council meeting, the direction provided to Staff was to allow anyone to appeal a Minor Use Permit. If the appellant was within 300 ft. of the project they would not have to pay the appeal fee, and if they were outside of the 300 ft. they would have to pay the appeal fee. Because Minor Use Permits are decided upon at an administrative level, this raises the question of whether Administrative Decisions and/or Administrative Citations can also be appealed by anyone. Staff suggests that only legally interested parties or Responsible Parties have the ability to appeal Administrative Decisions and Administrative Citations.

Appellants are required to submit the request to the City Clerk either on a designated form or in a letter. Staff created a Notice of Appeal of Citation form (**Attachment 4**) and the City Clerk's office maintains an Appeal of Administrative Decision Form (**Attachment 5**). Once there is a successful submittal of an appeal to the City Clerk, the appellant receives the Notice of Hearing which establishes the date, time, and location of the hearing. New Section 1.06.080 details the procedures and rules during a hearing. After the proceedings, the Hearing Officer issues a written decision to the appellant, addressing the approval or denial of a Hardship Waiver request or whether the City can recover the costs of the hearing.

RECOMMENDED ACTION:

Review the proposed changes to Title 1 and provide feedback to staff in order to prepare a final draft for introduction of an ordinance on September 26, 2022 to repeal and replace Title 1 of the Fort Bragg Municipal Code.

FISCAL IMPACT:

The City works diligently with property owners to resolve violations prior to the imposition of penalties. However, because the City intends to establish more proactive code enforcement activity, the potential for Administrative Citations is greater, making it imperative to establish a more reasonable penalty system and administrative process.

CONSISTENCY:

The proposed changes are consistent with established practices and regulations set forth by the State.

ATTACHMENTS:

1. Schedule of Administrative Penalties
2. Notice of Violation
3. Administrative Citation
4. Notice of Appeal of Citation
5. Appeal of Administrative Decision
6. FBMC Title 1 Proposed Revisions – Redline

NOTIFICATIONS:

N/A.