



*Abandoned Vehicle  
Abatement*



*Abandoned House  
Oversight*



*Marijuana  
Eradication*



*Homeless Camp  
Removal*

## **Madera County Code Enforcement Takes Action**

**2017-18  
Madera County Grand Jury  
Final Report 1718-02**

**Published on: May 3, 2018**

**2017-2018**

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**Summary:**

Madera County Code Enforcement Officers perform the vital function of enforcing Madera County Municipal Zoning Ordinances related to land use. Their duties include abatement of trashy properties, removal of abandoned vehicles, assisting with the abatement of illegal marijuana cultivation, and remediation of abandoned houses. Code Enforcement activities generate fines and fees of more than \$600,000, which are sufficient to cover the current annual cost of Code Enforcement operations. Code Enforcement activities are expected to increase with the California legalization of recreational marijuana.

The Madera County Grand Jury (MCGJ) has determined that the past selection of the Administrative Hearing Officer was informal and not in compliance with Madera County Codes. Also, the administrative citation appeal and fine payment processes require improvement.

**Background:**

The 2017-18 MCGJ received a citizen complaint regarding the administrative hearing process for the appeal of a fine levied by the Madera County Code Enforcement Office (CE). The fine was the result of an administrative citation for marijuana cultivation in violation of the Madera County Municipal Code sections relating to the cultivation of medical marijuana. The MCGJ authorized an investigation into the functions and operations of CE with special emphasis on the administrative hearing process.

Code Enforcement is a function of the Planning Division within the Madera County Community and Economic Development Department (CED). Before the specifics of the complaint could be investigated, an understanding of the operation of CE was needed; therefore, the investigation began with requests for documents regarding the organization, staffing, and operation of CE. The documents included: CE officer job descriptions; CE organization chart; CE Quick Reference Guide; Madera County budget for CE; CE fine payment records; Madera County codes relating to CE; and California Government Code sections related to county administrative hearings. Interviews were conducted with CE management staff and officers, a representative of the Madera County Counsel, and an Administrative Hearing Officer (AHO). Findings from recent administrative hearings were reviewed, and members of the MCGJ attended an administrative hearing for the appeal of a CE citation and fine.

**Discussion:**

Code Enforcement has five CE officer positions authorized in the 2017-18 Madera County budget. At the time of this writing, four positions are filled by fulltime CE officers, and one-half of a position is filled by a recently retired CE officer. In January, 2018, the Madera County Board of Supervisors (BoS) approved job descriptions for the Supervising CE Officer and CE III Officer positions to better align the

job descriptions with the actual duties performed by CE Officers. The BoS did not increase the total number of funded CE Officer positions.

The mission of CE, working with other divisions in CED, is to serve Madera County citizens by enforcing county ordinances that ensure their safety and quality of life. CE enforces zoning code ordinances. The areas in which CE has the lead role include abandoned vehicle abatement, abandoned homes rehabilitation, trashy yard abatement, illegal marijuana cultivation eradication, and the homeless encampment abatement. The marijuana cultivation abatement is usually a coordinated effort with the Madera County Sheriff's Office.

Code Enforcement activities are almost always initiated in response to a citizen complaint. Without a complaint, apparent violations are not investigated unless there is a health or safety issue. The primary exception is in cases of illegal marijuana cultivation, where the sheriff's office takes the lead role. Once a complaint is received, an investigation is started by a CE officer. The investigation normally includes an inspection of the property reported to be in violation. If a code violation is identified, evidence to document the code violation is gathered using digital photography, recordings, field measurements and notes as appropriate. Non-zoning code violations are referred to the appropriate County department(s). The next phase of the investigation requires determination of the responsible party or parties. Once the responsible party or parties are identified, a report is written, the specific code violations are cited, any fine is calculated, and an Administrative Citation is issued and delivered by first class mail. At any given time, each CE officer oversees over 100 open investigations.

In addition to investigative responsibilities, CE officers perform all of the clerical duties up to and including stuffing envelopes. The CE Officers support each other, learn from each other and work as a team. CE officers affirmed that there is a high level of morale in the office.

The notice of violation of a Madera County Ordinance is served by citation on the responsible party or parties and is punishable by a fine. There may be several violations on a single citation. The amount of the fine is on the citation along with the code section(s) violated, the description of the violation(s), and the correction(s) required. The citation states, "Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall be subject to citation." If a violation is not remedied by the stated date, the fine can increase daily. The citation also includes instructions on how to initiate an appeal.

In each of the past two years, CE has collected over \$600,000 in fines and fees. Most came from citations issued for code violations in lender-owned abandoned houses. Additional funds came from an annual grant of approximately \$50,000 from the state for the removal of abandoned vehicles. The fines, fees and grant funds covered the full operational costs of CE.

In most CE cases, no fines are collected. Remediating violations is more important than punishing those responsible for code violations because the clear and overarching goal of CE is "compliance not punishment." To achieve compliance, the CE officers will work with the responsible party or parties who have been cited.

Upon appeal of an administrative citation, a hearing is presided over by an Administrative Hearing Officer (AHO). CE is represented by CE officers and an attorney from the Madera County Counsel's

Office. The appellant is entitled to legal representation and may present evidence, call witnesses, and question the CE officers.

Only citations involving illegal marijuana cultivation have resulted in administrative hearings. The most common basis of appeal by a property owner is s/he did not know a tenant was engaged in illegal marijuana cultivation. A property owner and tenant grower both can be determined to be responsible parties. The fine is \$250 per plant, and some single violations have exceeded \$500,000. The property owner frequently is fined only ten percent of the total potential fine; however, despite a request by the MCGJ, CED did not provide specific documentation for the origin or rationale of the ten percent fine apportionment.

The qualifications and responsibilities of the AHO were a focal point of the investigation. The AHO is required to conduct a fair and impartial hearing and issue findings based on the evidence presented at the hearing. Madera County Code §8.01.090(A) states:

‘The director of the department issuing the administrative citation shall contract with an agency or entity to provide professional services to preside at the hearing and hear all facts and testimony presented and deemed appropriate. Such agencies or entities and their personnel shall be designated as "hearing officers."’

CE has held 25 administrative hearings during the past five years. The same AHO has presided over, and issued a determination for, all of these hearings. The original selection of the AHO was made several years ago by an informal process. No contract for AHO services exists, and no costs or fees have been incurred by the County for AHO services. The AHO’s written determinations are issued on the letterhead of the Chowchilla Fire Department.

The MCGJ investigation revealed that findings by the AHO seem to be inconsistent from one case to the next. For example, two cases with similar facts cited in the AHO written findings led to opposite determinations. In both cases, the property owners claimed to have no knowledge of the illegal marijuana cultivation, yet one owner was released from fines and the other was not.

A property owner’s fine is sometimes reduced or eliminated as a result of an appeal. Current Madera County Code allows the Deputy Director of CED to cancel or reduce any fine in any amount. There are no written guidelines for penalty payment adjustments. When violations are upheld, CE may establish a time payment plan for the fine. There are no guidelines for time payment plans. CE officers are responsible for the collection and monitoring of fine payments.

## **Findings:**

- F1. The CE team is dedicated and hardworking.
- F2. Current CE staffing does not allow sufficient time for investigations beyond those which are complaint-driven, and many potential code violations are not investigated.
- F3. Assistance with clerical tasks, including collecting and monitoring penalty payments, would provide CE officers with more time for enforcement activities.
- F4. The selection of hearing officers for CE administrative hearings does not comply with Madera County Code §8.01.090 –Hearing officer (see Appendix).

- F5. There has been inconsistency in administrative hearing findings where similar sets of facts exist.  
F6. There has been inconsistency in the adjustments of fines and administration of penalty payments.

## **Recommendations:**

The Madera County Grand Jury recommends that:

- R1. The BoS authorize and budget for additional CE Officer positions in the 2018-19 fiscal year.  
R2. CE Officers be provided with clerical assistance beginning with the 2018-19 fiscal year.  
R3. The Director of CED immediately comply with Madera County Code §8.01.090 - Hearing officer.  
R4. By September 1, 2018, CED shall develop written policies and procedures for the assessment and payment of fines for administrative citations.

## **Required Responses:**

Pursuant to Penal Code Section 933, the Grand Jury specifically requests responses as follows:

Madera County Board of Supervisors  
200 W. 4<sup>th</sup> Street  
Madera, CA 93637

Director of Madera County Community and Economic Development Department  
200 W. 4<sup>th</sup> Street  
Madera, CA 93637

## **Appendix**

### **8.01.090 - Hearing officer.**

A. The director of the department issuing the administrative citation shall contract with an agency or entity to provide professional services to preside at the hearing and hear all facts and testimony presented and deemed appropriate. Such agencies or entities and their personnel shall be designated as "hearing officers."

B. The employment, performance, evaluation, compensation, benefits of the hearing officer, if any, shall not be directly or indirectly conditioned on or in any way related to the results or prior decisions issued by that hearing officer.

C. Any person designated to serve as a hearing officer is subject to disqualification for bias, prejudice, interest or for any other reason for which a judge may be disqualified pursuant to Section 170.1 of the California Code of Civil Procedure. The responsible party may challenge the hearing officer's impartiality by filing a statement with the director of the department issuing the administrative citation objecting to the hearing officer and setting forth grounds for disqualification. The question of disqualification shall be heard and determined in writing by the department director or his or her designee within ten days following the date which the disqualification statement is filed.