

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

## Agenda Number:

**Prepared on:** April 29, 2003  
**Department Name:** Planning & Development  
**Department No.:** 053  
**Agenda Date:** May 6, 2003  
**Placement:** Departmental  
**Estimate Time:** 60 minutes (20 minutes staff)  
**Continued Item:** Yes  
**If Yes, date from:** January 21, 2003  
**Document File Name:** G:\GROUP\Permitting\Case Files\Oa\2000s\02 cases\02oa-00000-00012 Admin Fine\2BS\_LTRmay.DOC

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**TO:** Board of Supervisors

**FROM:** Dianne Meester, Assistant Director Planning & Development

**STAFF CONTACT:** Kimberley McCarthy, Supervising Planner  
Joseph Allen, Senior Deputy County Counsel

**SUBJECT:** **Administrative Fine Ordinance (Chapter 24A) Amendments**

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## Recommendation(s):

That the Board of Supervisors:

- 1) Find that this project is not subject to the California Environmental Quality Act pursuant to Section 15378(b)(5) of the Guidelines for Implementation of CEQA;
- 2) Approve the first reading of the proposed amendments to Chapter 24A (Administrative Fine Ordinance) increasing fines for repeat violations of various local ordinances (as codified in the ordinance) and other administrative amendments to clarify and refine Chapter 24A and;
- 3) Set hearing for second reading on May 13, 2003, for approval and adoption of the proposed amendments.

**(Estimated length of hearing: staff presentation 20 minutes total hearing time 40 minutes)**

## Alignment with Board Strategic Plan:

The recommendations are primarily aligned with Goal #1 "An Efficient Government Able to Respond Effectively to the Needs of the Community" and Goal #2 "A Safe and Healthy Community in Which to Live, Work, and Visit".

## **Executive Summary and Discussion:**

On January 21, 2003 staff presented the Board of Supervisors a package of proposed amendments to the Administrative Fine Ordinance designed to increase the effectiveness of the Ordinance as a tool to gain code compliance.

At that hearing, members of the public expressed concerns regarding the amendments. Particular concerns were with proposed changes in the method of notification/service of Notices of Violation and a feeling that agricultural and commercial properties might somehow be unfairly targeted.

At the Board's direction staff attended meetings of the Agricultural Advisory Committee and the Citizens Toxic Advisory Committee to present the proposed changes and answer questions regarding the Administrative Fine Ordinance.

Prior to these meetings, staff discussed public concerns raised in the Board hearing and believe it is appropriate to eliminate the proposed change in service/delivery of Notices of Violation. Although staff believes that the requirement for NOV delivery via certified mail has hampered enforcement efforts, the benefits from altering this requirement would not outweigh the public's concerns regarding sufficient and "fair" notice. Therefore, the proposed changes have been eliminated from the draft Ordinance and the original language reinstated (see Attachment A).

Additionally, in conjunction with the Oak Tree Protection program recently adopted by the Board of Supervisors (April 22, 2003), language has been added to the draft Ordinance which authorizes the Agricultural Commissioner or designee to assess fines related to violations of Chapter 14 with regard to native oak tree removal (see Attachment A).

Although other Departments have the ability to assess fines under Chapter 24A, the focus on the public comment in the Board hearing primarily dealt with Planning & Development's use of this Ordinance. The County Zoning Enforcement program is citizen complaint based. In preparation to meeting with the Advisory Committee (AAC), Planning & Development staff compiled information on zoning violation cases reported on agriculturally zoned property.

Planning & Development received 1,397 zoning violation complaints between January 1, 2000 to March 3, 2003. Of this total 100 complaints (7.16%) were located on agriculturally zoned property. Investigation of these complaints determined that 27 were not violations. These 27 cases/complaints were closed without the assessment of processing fees or penalties pursuant to standard County practice. Of the remaining 73 cases, only six cases were issued Notices of Violation. In four of the six cases, the violation was abated and Notices of Determination of Fines (NODs) were never issued. In the two remaining cases, NODs were issued but fines were never collected, the fines were ultimately waived under appeal.

On March 19, 2003, staff (Kimberley McCarthy, P&D and Alan Seltzer, County Counsel) made a presentation to the AAC including the statistical information provided above, answered questions and took comments from the members and the public. Members of the agricultural community voiced concerns about Planning & Development enforcement staff having the ability

to assess fines with respect to the provision in the Grading Ordinance that allows a permit to be required for agricultural grading “when there is a potential for significant environmental damage” given “ambiguities” in the enforcement of that recapture clause [see county Code Chapter §14-8(c)(8)]. A recommendation was made and supported by the AAC at the March 19, 2003 meeting that §14-8(c)(8) of the Grading Ordinance be eliminated from Chapter 24A. In other words, violations of permit requirements resulting from the significant environmental damage exception to the exemption for agricultural grading would not be subject to the assessment of fines as provided for under Chapter 24A. Staff has been advised that the Chair of the AAC (June VanWingerden) will attend the May 6, 2003 Board of Supervisor’s hearing to present the AAC’s comments.

Although staff awaits the Board of Supervisors’ direction on the AAC’s recommendation, the draft Ordinance (Attachment A) includes the exclusion of §14-8(c)(8) since staff is not opposed to removing this section of the Grading Ordinance from the authority of Chapter 24A. Violations of Chapter 14 would remain subject to all enforcement procedures and penalties detailed within §14.31, §14.32, §14.33, §14.34 and §14.36 of Chapter 14.

In discussions with the Fire Marshall (Tom Franklin) prior to meeting with the Citizens Toxic Advisory Committee (CTAC), Mr. Franklin indicated it would be preferable not to include Chapter 15 (Fire Prevention) within the jurisdiction of Chapter 24A. The Fire Marshall indicated that Chapter 15 contains clear procedures and strong penalties for dealing with violations of the Code and that in the Department’s estimation, fines/penalties available under Chapter 24A are not necessary to the successful implementation of this code. Staff has therefore removed Chapter 15 from the proposed Ordinance (consistent with the original Ordinance language).

Staff (Kimberley McCarthy, P&D and Alan Seltzer, County Counsel) made a presentation to CTAC on March 20, 2003. Staff responded to questions regarding enforcement procedures and the interplay of Chapter 24A with the enforcement program. CTAC took no formal action on the amendments at this meeting, nor submitted written comments to staff since that time.

Finally, comments from Mary Ellen Barilotti in her letter dated March 22, 2003, are addressed in a separate memorandum from County Counsel (Attachment B).

Staff has incorporated the text changes presented at the last Board Hearing and those discussed within this document. Please see Attachment A for the current draft Ordinance.

**Mandates and Service Levels:** The County of Santa Barbara adopted Chapter 24A (Ordinance 4296) in early 1998 (consistent with Government Code §53069.4), thus establishing procedures to govern the imposition, enforcement, collection and administrative review of administrative fines or penalties for violation(s) of local ordinances. From time to time, as a normal course of business Planning and Development proposes amendments to existing ordinances whenever such changes are warranted.

The proposed amendments to the Administrative Fines Ordinance would not result in a change to program's current service levels.

**Fiscal and Facilities Impacts:** Costs to complete the proposed amendments to the Administrative Fine Ordinance can be effectuated within the adopted FY 02/03 budget. Funds for this work are budgeted in the Building and Safety cost center on page D-272 of the adopted FY 02/03 budget book. No additional program costs will be incurred to Departments that utilize this Ordinance as a result of these amendments.

The proposed amendments would provide enhanced ability to assess higher violation fines and could result in an increase to the County's General fund. No new facilities are required as a result of the proposed amendments.

**Special Instructions:**

- Clerk of the Board will forward a copy of the Minute Order, together with any pertinent documents (i.e., signed Ordinance) to Planning and Development.
- Clerk of the Board shall publish a summary once within 15 days after the adoption of the Ordinance.

**Attachments:**

- A. 02ORD-00000-00012 Ordinance Amending Chapter 24A of the County Code
- B. County Counsel Memorandum Dated April 29, 2003

## Attachment A

ORDINANCE NO. \_\_\_\_\_  
CASE NUMBER 02-ORD-00000-00012

AN ORDINANCE ADDING CHAPTER 24A,  
SECTIONS 24A-1 THROUGH 24A-9  
(ADMINISTRATIVE FINES)  
TO THE SANTA BARBARA COUNTY CODE,  
ESTABLISHING ADMINISTRATIVE FINES OR PENALTIES  
FOR THE VIOLATION OF  
CHAPTERS 6 [Article III], 7, 10, 11,  
14[excluding the “potential for significant environmental damage” clause of §14-8(c)(8)],  
14C, 16, 17, 18 [Articles I, III, IV and V], 23 [Article III], 25, 29 [Article II],  
34A, 34B AND 35  
OF THE SANTA BARBARA COUNTY CODE

The Board of Supervisors of the County of Santa Barbara ordains as follows:

### SECTION 1.

Chapter 24A(Administrative Fines), comprising Sections 24A-1 to 24A-9, is hereby added to the Santa Barbara County Code, as follows:

#### **CHAPTER 24A. ADMINISTRATIVE FINES**

##### **Sec.24A-1. Administrative Fines or Penalties in Addition to Other Remedies, Authority, Definitions.**

In addition to any other remedy allowed by this Code or applicable law, any violation of the provisions of Santa Barbara County Code Chapters 6 [Article III], 7, 10, 11, 14[excluding the “potential for significant environmental damage” clause of §14-8(c)(8)], 14C, 16, 17, 18 [Articles I, III, IV and V], 23 [Article III], 25, 29 [Article II], 34A, 34B and 35, shall be subject to an administrative fine or penalty, enforcement and collection proceedings, as set forth in this Chapter and authorized by California Government Code section 53069.4. For purposes of this Article, "Director" shall include the Treasurer- Tax Collector, the Director of Animal Services, the Director of Planning and Development, the Agricultural Commissioner, the Fire Chief, the Director of Public Works, the Director of Environmental Health, and their designees. Unless otherwise specified, “owner" shall include the owner of property upon which a violation of this Article exists, the occupant of that property and any other party responsible for the violation.

## Sec.24A-2. Procedures

(a) The Treasurer- Tax Collector or his or her designee shall be responsible for implementing the procedures set forth in this Chapter with respect to violations of Chapter 6 [Article III]. The Director of Animal Services or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of Chapter 7. The Director of Planning & Development or his or her designee shall be responsible for implementing the procedures set forth in this Chapter with respect to violations of Chapters 10, 11, 14[excluding the “potential for significant environmental damage” clause of §14-8(c)(8)], 14C, 25, and 35 of the Santa Barbara County Code. The Agricultural Commissioner or designee shall be responsible for implementing the procedures set forth in this Chapter with respect to violations involving native oak tree removal under Chapter 14 of the Santa Barbara County Code.

The Fire Chief or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of Chapter 18 [Articles III, IV and V]. The Director of Environmental Health or his or her designee shall be responsible for implementing the procedures set forth in this Chapter with respect to violations of Chapters 16, 18 [Article I], 29 [Article II], 34A and 34B of the Santa Barbara County Code. The Director of Public Works or his or her designee shall be responsible for implementing the procedures set forth in this Chapter with respect to violations of Chapter 17 and Article III of Chapter 23 of the Santa Barbara County Code.

(b) Upon determining that a violation of any provision of Chapters 6 [Article III], 10, 11, 14[excluding the “potential for significant environmental damage” clause of §14-8(c)(8)], 14C, 16, 17, 18 [Articles 1, III, IV and V], 23 [Article III], 25, 29 [Article II], 34A, 348 or 35 of this Code exists with respect to any property, the Director shall transmit a Notice of Violation to the owner by certified mail or<sup>1</sup> personal service by a public officer to the person upon whom the fine has been imposed. The Notice of Violation shall specify:

- (1) The conditions constituting violations on the property;

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<sup>1</sup> Highlighted text indicates original language under adopted ordinance

(2) A specified time period not less than 30 days from **receipt** of the Notice of Violation within which the violation must be **corrected** ~~abated~~;

(3) That, the conduct, activity or circumstances constituting the violation must be stopped immediately or immediate steps must be taken to make the correction.

(4) That, in the event the violation is not **corrected** ~~abated~~ by the expiration of the specified time period ("effective date of the Notice of Violation"), the owner shall be subject to an administrative fine under this Chapter; and

(5) That the owner may submit in writing, to the Director, any information relating to a determination of the existence of a violation or the amount of the fine to be imposed. If the Director determines that an effort is being made to correct the violation, he or she may grant an additional period of time for correction of the violation.

(c) Notwithstanding (b), above, the Director may require immediate **correction** ~~abatement~~ of a violation if the violation creates an immediate danger to the health and safety of persons or property.

(d) The Director may condition any building permit, grading permit or land use permit issued to remediate a violation to require that the work or project described in the permit be completed by a certain date or in a certain period of time. Failure to complete the work or project by the date or within the time stated in a permit condition shall be good cause in the discretion of the Director to:

- 1) Issue a Stop Work Order, and/or
- 2) Suspend or revoke the permit, and/or
- 3) Impose administrative fines for the permit violation

### **Sec.24A-3. Amount of Fine-General**

Any person who violates any provision of Chapters 6 [Article III], 7, 10, 11, 14[excluding the "potential for significant environmental damage" clause of §14-8(c)(8)], 14C, 16, 17, 18

[Articles, 1, III, IV and V], 23 [Article III], 25, 29 [Article II], 34A, 34B or 35 of this Code, or any person who owns property upon which a violation exists, irrespective of whether that person caused the violation, shall be subject to an administrative fine up to the maximum amounts as set forth below.

**Sec.24A-4. Amount of Fine-Infraction**

If this Code designates the violation as an infraction, the Director shall impose as the administrative fine up to the maximum fine or penalty amounts for infractions set forth in subdivision (b) of California Government Code section 25132; the Director shall impose the fine if the violation is not abated by the effective date of the Notice of Violation.

**Sec. 24A-5. Amount of Fine-Other**

If this Code does not designate the violation as an infraction, **or deems as a separate and distinct violation each and every day during which a violation continues to exist or, if it provides in the alternative for civil remedies and penalties in amounts greater than set forth in subdivision (b) of California Government Code section 25132,** the Director shall impose an administrative fine within the amounts set forth below:

(a) If the violation arises from an unlawful commercial, industrial, rental (residential or non-residential), owner-occupied residential or similar use or structure on the property, the Director, in his or her discretion, shall impose a fine in one of the following sums:

(1) One hundred dollars (\$100.00) for the date of transmittal of the Notice of Violation, and up to one hundred dollars (\$100.00) for each calendar day thereafter that the violation exists on the property through the effective date of the Notice of Violation; ~~or for~~ **initial Notice of Violation, two hundred dollars (\$200.00) per day for second Notice of Violation and five hundred dollars (\$500.00) per day for any third or subsequent Notice of Violation for the same violation.**

(2) **In addition to the fines described in (a)(1),** in the event that the use of a Structure in violation may be permitted with an appropriate permit, up to a maximum of five times the amount of the standard fee for such permit.



~~(b) For any other violation, the Director in his or her discretion shall impose a fine in one of the following amounts:~~

~~(1) One hundred dollars (\$100.00) for the date of transmittal of the Notice of Violation, and up to one hundred dollars (\$100.00) for each calendar day thereafter that the violation exists on the property through the effective date of the Notice of Violation;~~

~~(2) In the event that the use of a structure in violation may be permitted with an appropriate permit, up to a maximum of five times the amount of the standard fee for the permit.~~

(b) In the event that an action results in a “one-time” violation which cannot be corrected/cured (e.g., violation of permit conditions, use violations, etc.) the Director may impose fines under an immediate Notice of Determination of Fines up to \$1,000.00 per each one-time action.

(c) If a violation is corrected pursuant to a notice of violation and the same conduct is committed within forty-five days of the correction, the violation will be deemed a continuing violation and immediate fines will be incurred dating back to the date of the original notice of violation.

#### **Sec.24A.6 Determination of Fine; Notice of Determination of Fine; Recordation of Notice**

(a) ~~The Director shall determine fines in the first instance.~~ In making a fine the determination, the Director shall take into account the facts and circumstances of the violation, including without limitation:

(1) The length of time the violation existed;

(2) The culpability of the owner and the willfulness of the violation;

(3) The number of previous violations of the same or related type committed by the owner within the preceding 36 months;

- (4) The extent of the violation and the effect of the violation on neighboring properties;
- (5) Attempts, if any, to comply with the applicable ordinances;
- (6) The time necessary to abate the violation;
- (7) Any other information relevant to a determination of the fine.

In making a determination of the fine, the Director shall consider any information submitted by the owner. In the event that the Director determines that the violation was not caused by, or with the knowledge of, the current owner, the Director may reduce or eliminate the fine. In the event the Director determines that the correction of the violation is not feasible, and the violation does not present a threat to public health or safety, the Director may reduce or eliminate the fine.

(b) After making a determination of the fine, the Director shall transmit a Notice of Determination of fine by **certified mail or** personal service by a public officer to the person upon whom the fine has been imposed. The Notice of Determination of Fine shall contain a statement that if the Owner fails to request an appeal of the administrative fine, the Notice of Determination of Fine shall be final and that any responsible party upon whom an administrative fine has been imposed may seek judicial review of the order imposing the penalty pursuant to Government Code §53069.4

(c) The Director may, in his discretion, record a copy of the Notice of Determination of Fine with the Santa Barbara County Recorder. In the event of such recordation, and in the event that the violation is subsequently corrected, the Director shall record a Notice of Correction. Correction of the violation shall not excuse the owner's liability for costs incurred during the administrative abatement process **or for payment of all fines accrued prior to correction.**

#### **Sec. 24A-7. Appeals**

(a) Any person upon whom an administrative fine is imposed by the Director may appeal such fine pursuant to the procedures set forth in this section. The appellant must file a written

appeal with the Director within ten working days of personal service or the date of mailing of the Notice of Determination of fine. The written appeal shall contain:

- (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
- (2) A brief statement of the material facts which the appellant claims supports his or her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
- ~~(3) An address at which the appellant agrees notice of any additional proceedings or an order relating to imposition of the administrative penalty may be received by first class mail.~~

(b) An appeal of an administrative fine imposed for violations of Chapter 6 [Article III] shall be heard by the Treasurer-Tax Collector as the hearing examiner. **An appeal of an administrative fine imposed for violations of Chapter 7 of this code shall be heard by the Director of Animal Services as the hearing examiner.** An appeal of an administrative fine imposed for violations of Chapters 10, 11, 14[excluding the “potential for significant environmental damage” clause of §14-8(c)(8)] and/or Chapter 14C of this Code shall be heard by the ~~Building Official~~ **Director of Planning and Development.** **An appeal of an administrative fine imposed for violations of Chapter 14 involving native oak tree removal shall be heard by the Agricultural Commissioner.** An appeal of an administrative fine imposed for violations of Chapters 16, 18 [Article I], 29 [Article II], 34A and/or 34B of this Code shall be heard by the Director of Environmental Health as the hearing examiner. An appeal of an administrative fine imposed for violations of Chapter 17 and/or Article III of Chapter 23 of this Code shall be heard by the Director of Public Works as the hearing examiner. An appeal of an administrative fine imposed for violation of Chapters **25 and 35** of this code shall be heard by the ~~Zoning Administrator~~ **Director of Planning and Development** as the hearing examiner. The administrative fine appeal hearing shall be set no sooner than twenty (20) days and no later than forty-five (45) days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least twelve calendar days before

the date set for the hearing. Failure to appear timely will cause the administrative fine to become a final order or decision.

(c) In reviewing the fine, the hearing examiner shall consider the factors set forth in Section 24A-6(a) above, and shall uphold the fine imposed by the Director or his or her designee, eliminate the fine, or modify it. The decision of the hearing examiner shall constitute the final administrative order or decision of the local agency within the meaning of Government Code section 53069.4(b)(1) and (c). The hearing examiner shall serve a copy of his or her written decision on the appellant by first class mail to the address provided by appellant in the written notice of appeal **within forty-five days of the appeal hearing**. The hearing examiner's decision shall be deemed served within two days after the date it was mailed to the address provided by the appellant.

#### **Sec.24A-8. Enforcement and Collection**

When an administrative fine or penalty becomes a final order under this Section or Government Code section 53069.4, the County may proceed to collect the fine or penalty as follows:

(a) In the event a civil action is commenced to collect the administrative penalty, the County shall be entitled to recover all costs associated with the collection of the penalty. Costs include, without limitation, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure section 1033.5.

(b) An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 20th day after the penalty becomes a final decision or order.

(c) The amount of any unpaid final administrative fine, plus interest, plus any other costs as provided in this Chapter, may be declared a lien on any real property owned by the owner within the County against whom an administrative penalty has been imposed, as follows:

(1) Notice shall be given to the Owner before recordation of the lien, and shall be served in the same manner as a summons in the civil action pursuant to Code of Civil Procedure section 415.10 et seq.;

(2) The lien shall attach when the County records it with the County Recorder's office. The lien shall specify the amount of the lien, the date of the code violations, the date of the final decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel; and

(3) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, the County shall record a notice of the discharge containing the information specified in subparagraph (2).

(d) The County may withhold issuance of licenses, permits and other entitlements to a responsible party on any project, property, or application of any kind whenever administrative penalty remains unpaid.

(e) County may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 et seq.

#### **Sec.24A-9. Judicial Review**

Any person aggrieved by a final administrative order or decision imposing an administrative fine may seek review with the ~~Municipal~~ Superior Court in Santa Barbara County pursuant to Government Code § 53069.4.

## SECTION 2

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of Santa Barbara hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more, section, subsection, sentence, clause, phrase, or portion thereof may be declared invalid or unconstitutional.

## SECTION 3

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the same, in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara, State of California.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the  
County of Santa Barbara, State of California, this day of \_\_\_\_\_ 2003 by the  
following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Supervisor Naomi Schwartz  
Chair, Board of Supervisors

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

BY \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, C.P.A.  
AUDITOR-CONTROLLER

By \_\_\_\_\_

By \_\_\_\_\_



Office of County Counsel  
MEMORANDUM

Date: April 29, 2003  
To: Board of Supervisors  
From: Alan Seltzer, Chief Assistant County Counsel  
Joseph Allen, Senior Deputy  
Re: Administrative Fine Ordinance

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This memorandum addresses the five comments on the Administrative Fine Ordinance amendments in the letter to your Board from Mary Ellen Barilotti dated March 22, 2003.

1. Ms. Barilotti's first comment misapprehends the purpose of section 24A-2(d), which authorizes Departmental officials to condition permits *issued to remediate violations* to require that work be performed within a prescribed time period. This section provides that if the work or project is not completed within the time stated in the permit condition, administrative fines may be imposed. Contrary to Ms. Barilotti's comment, it does not apply "only when the original permit lapses." To further ensure that the purpose of this provision is understood, language has been added to clarify that the time limitations in which to complete work or a project apply to permit conditions in permits issued to remedy violations.
2. The subsections to which Ms Barilotti refers to as in section 24A-4 are found in the revised ordinance in section 24A-5. There is no need to amend section 24A-5(a)(1) to advise the public that administrative fines apply only when the violation has not been timely corrected. This notice is already present in section 24A-2(b), subsections (2) and (4).
3. The amendments retain the existing provision at section 24A-4 that if the County Code designates a violation as an infraction, the maximum fines are those established in Government Code section 25132 for infractions. Section 24A-5 now expressly applies only to violations that the County Code does not designate as an infraction. Therefore, contrary to Ms. Barilotti's claim, the penalties identified within section 24A-5(a) and (b) are within the County's authority to establish.
4. Ms. Barilotti's fourth comment is also misdirected. The Administrative Fine Ordinance does not authorize the collection of administrative costs associated with the zoning violation abatement or correction process. The procedures for the recovery of administrative costs reasonably related to enforcement of the zoning ordinances are found in the "Legal Procedures and Penalty" sections of the Chapter 35, Article II, III, and IV zoning ordinances. They are not part of the Administrative Fine Ordinance.



5. Ms. Barilotti's final comment relates to constitutional due process requirements for independence as to hearing officers who conduct appeal hearings under the ordinance. The concern in question arises from the decision of the California Supreme Court in *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017. The facts in the *Haas* case are not applicable, and involved a formal appointment of an attorney to serve as a hearing officer pursuant to Government Code §§ 27720 et seq. That procedure is not implicated by our administrative fine ordinance, which is authorized by Government Code 53069.4 and provides for informal hearings before designated senior staff, not attorneys, followed by resort to the courts if desired by the landowner.

In *Haas*, the Court held that when a county appoints a hearing officer, pursuant to the authority of Government Code § 27721, the hearing officer must be appointed under arrangements that do not give the officer a personal interest in deciding in favor of the appointing agency. (27 Cal.4th at 1021.) The Court held that any arrangements under which a hearing officer may increase the chance for future compensated work from the agency, and thereby have a financial interest in ruling one way, violates due process. (27 Cal.4th at 1020-1021.)

Plaintiff contends this practice gives hearing officers an impermissible financial interest in the outcome of the cases they are appointed to decide, because the officers' prospects for obtaining future ad hoc appointments depend solely on the county's good will and because the county, in making such appointments, may prefer those officers whose past decisions have favored the county. We agree. Counties that appoint temporary administrative hearing officers must do so in a way that does not create the risk that favorable decisions will be rewarded with future remunerative work. The ad hoc procedure used here does create that risk. We thus affirm the Court of Appeal's decision upholding the superior court's writ of mandate disqualifying the hearing officer. (*Haas, supra*, at 1020-1021.)

*Haas* is inapplicable to the administrative fine program, since the compensation of hearing officers does not depend in any way on whether they agree to serve in this capacity, or how they rule if they choose to serve.

Moreover, the County's system for administrative appeal hearings was recently approved in *Nightlife Partners, Ltd. v. City Of Beverly Hills* (2003 Cal. App. LEXIS 612, filed April 24, 2003.) There, the Court of Appeal allowed the hearing officer for an administrative appeal to be a city employee, but found that the city attorney who participated in making the decision being appealed could not advise the decision-maker on appeal in the same case. The Court distinguished between combination of the investigative and adjudicative functions and combination of prosecutorial and adjudicative functions in approving the city hearing officer as decision-maker, but finding that the "prosecuting" attorney could not advise the decision-maker.

"While the combination of *investigative* and adjudicative functions standing alone *generally* does not create a due process violation in the absence of some showing of

bias (citation omitted), the same cannot be so readily said when prosecutory and adjudicative functions are too closely combined.” (*Id.* at 20.)

Indeed, the Court recognized that

“...an agency's staff counsel may prosecute a case before the agency when an independent hearing officer presides over the contested case hearing, *if* the prosecutor plays no role in the agency's deliberations. (citation omitted.) So, too, two lawyers from the same office could serve in dual capacities - one as prosecutor and one as legal advisor to the administrative agency - as long as they were effectively screened from each other. (citation omitted.) However, it is improper for the same attorney who prosecutes the case to also serve as an advisor to the decision maker.” (*Id.* at 24.)

It is County Counsel’s practice to ensure separation between attorneys who advise enforcement staff and hearing officers.

Finally, the Court in *Nightlife Partners* recognized that the fact that a hearing officer is an agency employee with staff involved in the fact-finding and investigatory process does not make the hearing process unconstitutional. Citing authorities referenced in the opinion, the court noted: "the mere fact that the decision-maker or its staff is a more active participant in the fact finding process--similar to the judge in European civil law systems--will not render an administrative procedure unconstitutional." Similarly, here, the fact that hearing officers are Departmental Directors or their designees does not render the ordinance appeal process unconstitutional.