



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

Michael J. Johnson, AICP  
Agency Director

**BUILDING**  
**SERVICES DIVISION**

Tim Wegner, Chief Building Officer

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael Johnson, AICP  
Agency Director

By: Ted Rel, Supervisor – Code Enforcement

**DATE:** June 16, 2015

**SUBJECT:** Code Enforcement Administrative Citation Hearing Officer List

**ACTION REQUESTED**

Approve the addition of Mark Rathe to the list of eligible Administrative Hearing Officer candidates pursuant to Placer County Code Chapter 17, Section 17.62.180 (D)(1).

**BACKGROUND**

On October 19, 2010, the Board of Supervisors adopted Ordinance 5625-B that established the Administrative Citation code enforcement process as codified in Placer County Code, Chapter 17, Section 17.62.180. The Administrative Citation Ordinance requires that an Administrative Hearing Officer be appointed by the Agency Director from a list of persons approved by the Board of Supervisors to conduct hearings on Administrative Citations ("Administrative Citation Hearing Officer List"). Currently, there are no eligible candidates on this list.

The Community Development Resource Agency implemented the administrative citation program approximately one year ago. The Agency Director appointed Anne Rubenstein as the first Administrative Hearing Officer. Several administrative hearings were successfully conducted by Ms. Rubenstein. Unfortunately, Ms. Rubenstein moved out of the area and had to resign from the position.

The vacancy created by Ms. Rubenstein's departure generated the need to search for a replacement Administrative Hearing Officer. During the search, Mark Rathe was identified as a viable candidate. Mr. Rathe is a former County employee having retired from the County Counsel's Office after more than 14 years of service. Staff interviewed Mr. Rathe and found his knowledge, skills, and abilities to be consistent with the qualifications necessary to perform as a Placer County Administrative Citation Hearing Officer.

**DISCUSSION**

Staff is requesting Mr. Mark Rathe be added by your Board to the list of eligible Administrative Citation Hearing Officer candidates. Mr. Rathe is a retired Attorney and while currently inactive with the California Bar, membership in the California Bar is not a requirement of the position. Staff has

499

determined Mr. Rathe's qualifications meet or exceed those necessary to be successful in the capacity of an Administrative Hearing Officer. Mr. Rathe's qualifications include:

- Practiced law from 1985 to November 2014; 6 years with Nevada County and over 14 years with Placer County.
- Litigated cases before numerous bodies including:
  - Placer Civil Service Commission
  - California Unemployment Appeals Board
  - CalPERS Benefit Appeals Board
  - Public Employees Relations Board
  - Workman's Compensation Appeals Board
- Litigated Code Enforcement cases for Nevada County
- Assisted in the development of Nevada County's Hazardous Building Abatement Ordinance
- Values proper hearing etiquette
- Effective communicator
- Well balanced regulatory knowledge and public relations awareness.

This unique skill set would allow Mr. Rathe to deal effectively with the variety of issues that would come before an Administrative Citation Hearing Officer. His tenure with Nevada County and Placer County as a Deputy County Counsel and knowledge of code enforcement as well as administrative hearing procedures will enable him to grasp the unique and diverse challenges of Placer County code enforcement while ensuring alignment with the Board of Supervisor's vision for the Administrative Citation process.

#### **FISCAL IMPACT**

It is anticipated the administrative hearing officer may work up to four hours per hearing day with the possibility of two hearing days per month. The Hearing Officer is compensated at a rate of \$100.00 per hour, with an annual cost of up to \$10,000. The Building Services Division appropriation has adequate funding to accommodate these charges.

Attachment 1: Section 17.62.180 (Administrative citation) of the Placer County Code.

<b>Placer County Code</b>							
<b>Up</b>	<b>Previous</b>	<b>Next</b>	<b>Main</b>		<b>Search</b>	<b>Print</b>	<b>No Frames</b>

Chapter 17 ZONING  
Part 3. Administration and Procedures  
Article 17.62 CODE COMPLIANCE AND ENFORCEMENT

**17.62.180 Administrative citation.**

This section provides for the issuance of administrative citations and imposition of fines as authorized by state law, and is in addition to all other legal remedies, criminal or civil, which may be pursued by the county. The code official is authorized by the board of supervisors to employ the provisions of this section and issue an administrative citation to any person who violates any provision of Chapters 5, 8, 9, 12, 15, 16, 17, or 18 of this code and for nuisances defined in Section 17.62.160(A).

A. Warning of an Administrative Citation.

1. Whenever the code official determines that a violation has occurred, the code official shall issue a warning of an administrative citation to the owner and, if known, any other person responsible for the violation as a prerequisite to the issuance of a first administrative citation.

2. A warning shall not be required before the issuance of a second or any subsequent administrative citation for a continuing or repeated violation.

3. A warning shall include all of the information mandated by Section 17.62.120.

4. A notice of violation pursuant to Section 17.62.120 shall constitute a warning under this subsection.

B. Administrative Citation.

1. Whenever the code official determines that a violation has occurred, the code official may issue an administrative citation to the owner of the property after any required warning has first been issued. Each and every day during which a violation is committed, continued or permitted shall constitute a separate violation. An administrative citation may contain more than one allegation of violation.

2. Each administrative citation shall contain the following information:

a. The date(s) of the violation;

b. The address, or APN, and description of the location where the violation occurred;

c. The code section(s) violated, a description of the violation, and the dates the violation has occurred;

d. The date, location, and time of the hearing for which these matters are to be heard before the Placer County hearing officer;

e. A description of the administrative citation review process, including the potential maximum amount of the fine that may be assessed by the hearing officer; and

f. The name and signature of the citing code official.

C. Service of Warning or Administrative Citation. Service of a warning or an administrative citation may be accomplished as provided for in Section 17.62.080. Where personal service is used, the signature of the owner or person in apparent possession or control of the subject site may be obtained on the administrative citation. If the owner or person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of service nor of the citation and subsequent proceedings.

D. Hearing.

501

1. Hearing Officer. "Hearing officer" shall mean the person or persons appointed by the agency director to preside over an administrative hearing provided for in this section from a list of persons approved by the board of supervisors.
2. Hearing Procedure. The procedure for hearings shall otherwise be the same as set forth in Section 17.62.070, and
  - a. At the hearing, the party issued the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation;
  - b. The failure of the party issued the administrative citation to appear at the administrative citation hearing shall constitute a failure to exhaust administrative remedies;
  - c. The administrative citation and any additional report submitted by the code official shall constitute prima facie evidence of the respective facts contained in those documents. The code official is required to appear at an administrative citation hearing;
  - d. The hearing officer may continue the hearing to receive additional information prior to issuing a written decision;
  - e. The hearing need not be conducted according to technical rules relating to evidence and witnesses.
3. Hearing Officer's Decision.
  - a. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, uphold in part or deny the administrative citation and shall list in the decision the reasons for that decision.
  - b. If the hearing officer determines that the administrative citation should be upheld, the hearing officer may: issue an order prohibiting the continuance of conditions constituting the violation, impose a fine for each day the violation has occurred or will continue to occur, suspend payment of any fine contingent upon correction of the violation within a specified time period, or take such other action with respect to imposing a fine in accordance with this article as will facilitate correction of the violation.
  - c. The hearing officer shall serve a copy of the decision to the owner and the county.
  - d. The decision of the hearing officer as to the finding of a violation pursuant to subsection (3)(a) shall be conclusive and final. The decision of the hearing officer as to the imposition of penalties pursuant to subsection (3)(b) may be appealed to the planning commission by any person responsible for correction of the violation or payment of the fine, but the decision of the hearing office as to uphold, uphold in part or deny the administrative citation pursuant to subsection (3)(a) shall be final.
4. Appeal to Planning Commission of Penalty Only. An appeal of the penalty to the planning commission must be filed within twenty (20) calendar days from the date of service of the hearing officer's written decision, accompanied by the appeal fee established in the planning department's fee schedule. The planning commission may uphold, uphold in part or deny the appeal and shall list in the decision the reasons for that decision. The failure of any cited party to properly file a request for appeal within the time specified in this subsection shall constitute a waiver of the right to further review and adjudication of the penalty or any portion thereof. The procedure for appeal to the planning commission shall otherwise be the same as set forth in Section 17.60.110. The decision of the planning commission as to penalties shall be final.
5. Right to Judicial Review. Any cited party aggrieved by the final decision of the hearing officer or of the planning commission on an administrative citation may obtain review of the administrative decision in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.
  - E. Amount of Fines.
    1. The fine for code violation(s) imposed pursuant to this section shall be up to one hundred dollars (\$100.00) for each violation contained in the first administrative citation; up to five hundred dollars (\$500.00)

502

for each violation contained in a second administrative citation issued for violation of the same ordinance or other provision on the same property, within one year of

the final date that a prior administrative citation for a violation of the same provision on the same property was upheld (in whole, part, or as modified) or uncontested; up to one thousand dollars (\$1,000.00) for each violation contained in a third or subsequent administrative citation issued for violation of the same ordinance or other provision on the same property, within one year of the final date that a prior administrative citation for a violation of the same provision on the same property was upheld (in whole, part, or as modified) or uncontested. The fine amounts shall be cumulative where multiple citations are issued.

2. A late payment charge shall be paid to the county in the amount specified in subsection G, if a fine has not been paid in full to the county on the date on which it is due.

F. Payment of the Fine.

1. The fine shall be paid to the county in accordance with the payment schedule as determined by the decision of the hearing officer or the planning commission.

2. Payment of a fine under this section shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

G. Collection Administration Charge. Any cited party who fails to pay to the county any fine imposed pursuant to the provisions of this section on or before the date that fine is due shall also be liable for the payment of a collection administration charge in the amount of ten (10) percent of the total fine amount owed.

H. Recovery of Administrative Citation Fines and Collection Costs. The county may also recover its costs and collection costs pursuant to Section 17.62.090. The failure of any cited party to pay a fine assessed by an administrative citation or a collection administration charge by the due date shall constitute a debt to the county. The county may seek payment of the debt by use of all available legal means, including, but not limited to, the following:

1. The county may refer the debt for collection.

2. The county may file a civil action in a court of law to recover the debt.

3. The county may impose an assessment and record a code enforcement lien upon the real property upon which the violation is located pursuant to the procedures provided in Section 17.62.160(E)(4). (Ord. 5625-B § 1, 2010)

---

View the [mobile version](#).

503

