No. 24-1180

IN THE

Supreme Court of the United States

CORRINE MORGAN THOMAS, *et al.*,

Petitioners,

v.

HUMBOLDT COUNTY, CALIFORNIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the Seventh Amendment right to a jury trial in suits at common law incorporated against the States by the Fourteenth Amendment?

2. If so, is the administrative imposition of civil penalties by local government for land use and building code violations a "suit at common law" requiring a jury trial?

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STATUTES OR OTHER PROVISIONS INVOLVED

In addition to the constitutional provisions and County ordinances cited in the Petition, this case implicates California's statute authorizing administrative procedures like the County's and providing for judicial review therefrom. A copy of California Government Code section 53069.4 is attached.

Also attached are the relevant provisions of Title III, Division 5, Chapter 352 of the Humboldt County Code, regarding Administrative Civil Penalties.

INTRODUCTION

Petitioners Corrine Morgan Thomas and Doug Thomas, Blu Graham, Rhonda Olson, and Cyro Glad alleged a class action against Humboldt County, its Board of Supervisors, and its Planning and Building Department under 42 U.S.C. section 1983, asserting: violation of their Fourteenth Amendment:

- procedural due process rights;
- substantive due process rights;
- prohibition against unconstitutional exactions;
- prohibition against excessive fines; and,
- jury right.

They challenged the County's efforts to remedy their violations of building safety, land use, and cannabis commerce laws. The allegations were vague and conclusory and judicially noticeable, public documents instead show only appropriate and timely administrative efforts to cure Petitioners' knowing violations of local law. While the district court agreed, finding Petitioners' allegations implausible and overwrought, the Ninth Circuit reversed based largely on the forgiving standard of review on facial Rule 12 motions. Nevertheless, the underlying facts show this case presents a poor vehicle for this Court's review of the right to jury trial in state and local administrative proceedings.

STATEMENT OF THE CASE

A. Implementing State Law, the County Provides for Administrative Enforcement of Cannabis Regulation Violations

California Government Code section 53069.4 allows a city or county to make any violation of local ordinance subject to an administrative fine or penalty:

> 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.

Cal. Gov't Code § 53069.4(a)(1). Additionally, for cannabis cultivation:

> [T]he ordinance adopted by the local agency pursuant to this subdivision may declare commercial cannabis activity undertaken without a license … to be a public nuisance and provide for the immediate imposition of administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists as a

> result of, or to facilitate, the unlicensed cultivation, manufacturing, processing, distribution, or retail sale of cannabis for which a license is required.

Cal. Gov't Code § 53069.4(a)(2)(B). An aggrieved landowner has the option, following a final administrative order or decision, to seek judicial review under California Code of Civil Procedure sections 1094.5 and 1094.6, or to appeal the decision directly to the superior court for de novo review as a limited civil case.[1] Cal. Gov't Code § 53069.4(b)(1).

The administrative fines chapter of the Humboldt County Code ("HCC")[2] implements this statute, detailing an adequate and fair process to enforce local laws and to impose fines when necessary. When the County learns of a violation, it issues a "Notice of Violation and Proposed Administrative Civil Penalty." HCC § 352-7. The Notice must state the "name and last known address of each responsible party," such as the owner or occupant of land. HCC § 352-8(a). It informs the cited party of the chapter's procedures, including an opportunity to contest a violation and/or a proposed penalty. HCC §§ 352-8(g), 352-9. Upon a request for

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[1] Although California merged its municipal and justice courts into its superior courts in 1998, vestiges of the distinction remain in the form of limited and unlimited civil procedures in superior courts.

[2] The Humboldt County Code is available at < https://humboldt.county.codes/Code/352 > (last viewed July 3, 2025).

an appeal, the County notifies each responsible party that a hearing officer appointed by the County Board of Supervisors will hear the appeal after further notice. HCC § 352-8(j), 352-9. Notices of violation also state a penalty is not final until 20 days after service of decision on any appeal, if judicial review is not sought under California Government Code, section 53069.4. HCC §§ 352-8(l)(ii), 352-12. If judicial review is sought, a fine is final 10 days after the superior court's determination. HCC §§ 352-8(l)(iii), 352-13. Penalties for illicit cannabis cultivation — a widespread problem in this rural county characterized by temperate rainforest including giant sequoias — commence with service of a "Notice of Violation and Proposed Administrative Civil Penalty," and are also subject to judicial review. HCC §§ 352-3(m), 352-5(b)(2), 352-13.

A violation may incur penalties up to $10,000 a day through the 90th day it is maintained. HCC § 352-5(a). Factors which govern penalty amounts include:

- the severity of a violation,
- the number of complaints received,
- the willfulness and/or negligence of the responsible party,
- whether she took reasonable steps to prevent a violation,

- whether she had actual or constructive knowledge of a violation's impacts,
- her degree of sophistication,
- prior violations,
- County staff time incurred, and
- her efforts to remediate the impacts of her misconduct.

HCC § 352-6(a), (b). Fine "Categories 1 through 4" reflect degrees of willfulness and severity of violations. HCC § 352-6(b). A hearing officer may find no violation exists or may suspend or reduce a fine applying these criteria or upon finding a responsible party promptly remedied a violation. HCC § 352-12(a), (b).

Instructions for seeking judicial review accompany a hearing officer's ruling. HCC § 352-12(c). "[J]urisdiction to collect the final administrative civil penalty" and administrative costs and fees flows from a Notice of Violation and Proposed Administrative Penalty not reversed by a hearing officer or superior court. HCC § 352-14(a). Absent these, County staff may not collect penalties. *Id.* The County Planning Director can also reduce or eliminate administrative costs, fees, and penalties and may make a "compliance agreement" with a responsible party to reduce or eliminate those charges to induce voluntary compliance, as with Blu Graham here. HCC § 352-14(c).

B. The County Cites Petitioners for Significant Cannabis-Related Code Violations on Their Properties

Petitioners' attempts to portray themselves as "innocent victims of Humboldt's code-enforcement regime" blink reality. Pet. at 7. Rather, all were directly responsible for significant code violations on their properties, or bought their properties with knowledge of those violations, perhaps seeking bargain real estate. Rather than rush to impose and collect penalties, the record reflects the County attempted to achieve voluntary compliance, for years.

1. Corrine and Doug Thomas agree to resolve their Code violations

In mid-2021, satellite imagery and a realtor's listing revealed a metal building with a reflective roof used to grow cannabis at the Thomases' home in Miranda, California (population 441). Pet. App. at 58a–59a. The realtor's photographs showed multiple building vents and cloning trays leaning against the building. *Id.* The Thomases acquired this property from Summerville Creek LLC in August 2021. Pet. App. at 58a. Unaware of the sale, the County served violation notices the same month, naming Sommerville Creek as the "responsible party" and giving it 10 days to correct the violations. Pet. App. at 58a–60a.

With the Thomases' consent and their attorney present, the County inspected the site in September 2021, confirming the barn had been used to cultivate cannabis. Pet. App. at 60a–61a. The Thomases did not wish to demolish it, but the County inspector explained the County's then-policy requiring removal. Pet. App. at 61a. Although the County never designated the Thomases as responsible parties, they appealed anyway. Pet. App. at 62a. They then did nothing to abate the nuisances over the next year, despite making a Compliance Agreement with the County, agreeing to remove the building, constructed without inspections or permits and in violation of safety standards, such as clearance between the building and trees to allow fire access. Pet. App. at 62a–63a.

In March 2022, the County advised the Thomases of a new policy offering property owners a path to permit illicit cannabis structures, avoiding demolition, by providing a restoration plan describing a lawful, non-cannabis use for a structure. Pet. App. at 60a. In April 2022, the Thomases' attorney notified the County of their wish to benefit from this policy. Pet. App. at 62a–63a. But, the Thomases have yet to apply for a permit to retain the illicit grow barn. Pet. App. at 63a–64a. Still, the County has never named the Thomases in a notice of violation or fined them, and they have yet to need a hearing. Pet. App. at 64a–65a. If the property is less valuable because of known code violations, that was true when they bought it.

2. Blu Graham resolves his Code violations

In May 2018, the County issued notices to Blu Graham for three cannabis violations on his property in Shelter Cove, California (population 793) in the remote, roadless Lost Coast region of the County:

- unpermitted grading (a pond) (HCC § 331-14),
- four unpermitted structures consistent with greenhouses or "hoop houses" commonly used to grow cannabis (HCC § 331-28), and
- a violation of the County's commercial cannabis ordinance (HCC § 314-55.4).

Pet. App. at 64a. Here too, the County established the violations using satellite data, as well as the Planning and Building Department's and other agencies' records. Pet. App. at 64a–65a. Graham abated two violations by showing no current cultivation and removing the unpermitted hoop houses. Pet. App. at 65a–66a.

In 2018, Graham and his attorney contacted the County about obtaining a grading permit and a permit for his greenhouses, but made no application. Pet. App. at 66a–67a, 191a–193a [FAC at ¶¶ 357–369]. In 2021, the County offered a compliance and no-penalty agreement proposing that Graham conduct remedial grading and fill the pond; he

refused, appealing the notice of violation. Pet. App. at 66a–67a.

In July 2022, Graham again contacted the County about applying for permits to retain the unpermitted pond for firefighting. Pet. App. at 67a. In October 2022, on the eve of his hearing, Graham agreed to apply for a grading permit for the pond and to pay the County's administrative costs. *Id.* The County issued Graham his grading permit that same day, billing him $3,474.10 in costs. Pet. App. at 67a–68a. The County cancelled the appeal hearing, as the matter was resolved. Pet. App. at 68a. The County later refunded Graham $2,951.18 in hearing preparation and noticing costs, asking him to pay less than $800 for his post hoc permit application. *Id.*

3. Efforts to resolve Rhonda Olson's Code violations continue

Rhonda Olson purchased three adjacent parcels of land near her home in Orleans, California (population 854) in the Six Rivers National Forest in September 2020 — all with active code enforcement cases. Pet. App. at 68a. The County had issued the prior owners notices of violation for unpermitted cannabis cultivation and unpermitted structures in 2018. Pet. App. at 69a. In August 2020, the County Sheriff's office executed search warrants on the three parcels, finding them used as one cannabis cultivation site. Pet. App. at 69a. The County issued new notices to those prior owners, unaware they had sold to Olson

days earlier. Pet. App. at 71a. Two parcels required a grading assessment and plan to correct an unpermitted tunnel dug under an industrial building. Additionally, the County cited unpermitted cannabis cultivation and greenhouses, solid waste and junk vehicles, and unpermitted grading. Pet. App. at 71a–72a. A photo of the unpermitted tunnel appears next.

3-ER-543.

Olson showed interest in correcting the violations, hiring consultants and submitting a plan to restore her land. Pet. App. at 72a–73a. The County allowed her time to abate before serving her any notices, but after nearly 18 months of inaction, served a new notice naming Olson and identifying continuing violations and needed corrections. Pet. App. at 72a–73a. She timely appealed. Pet. App. at 74a. In May 2022, her third consultant submitted a remediation plan. Pet. App. at 74a. The County approved it for one parcel, but as to the others, required further removal of cannabis structures, infrastructure, and solid waste, filling dozens of holes, and obtaining permits for a 10,000-square-foot graded area and an accessory building connected to cannabis cultivation. Pet. App. at 74a–75a. Olson agreed to comply, but has yet to do so three years later. Pet. App. at 75a.

4. Glad's violations continue, delaying resolution of his case

In September 2018, Cyro Glad bought a 40-acre parcel in New Harris, California, within the census-designated place of Garberville (population 818). Pet. App. at 75a. The County used satellite images to identify code violations there, too. Pet. App. at 76a. In November 2018, the County served Glad a notice of violation for:

- unpermitted grading;
- construction in violation of building, plumbing and/or electrical codes;

- violation of the commercial cannabis land use ordinance, and
- development within a streamside management area.

Pet. App. at 76a.

Glad made two requests for an administrative hearing in November 2018, admitting " 'all nuisances are in [the] process of being removed, cleaned, and [brought into compliance] with county code standards.' " Pet. App. at 76a. Glad hired an engineer to assess his property. *Id.* The County waited, but in May 2021 sent a letter asking whether he wanted to continue with the hearing or reach a Compliance Agreement. Pet. App. at 76a. Glad never responded, causing the subsequent delay. The violations remain unabated.

C. The Petition Paints a Distorted Picture

The County agrees with Petitioners that "the facts matter a lot in these cases." Pet. at 3. However, many of their allegations are simply not credible. The persuasive official lawlessness they describe would be national news, as was the corruption of Huey Long and Boss Tweed. As the district court noted repeatedly in its order of dismissal citing judicially noticeable records, Petitioners "paint[] … a distorted picture of the interactions between Plaintiffs and the County … ." Pet. App. at 83a.

First, Graham is not a proper petitioner here, as he never sued the County over the Seventh Amendment and is not a member of the putative class. Pet. App. at 210a [FAC at ¶ 482]; 235a–238a [FAC at ¶¶ 586–603]. The reason was obvious — he conceded culpability (Pet. App. at 191a–192a [FAC at ¶ 362]) and resolved his case before any hearing and before this suit was filed. Pet. App. at 67a–68a, 198a–199a [FAC at ¶¶ 399–403, 406–408]. Nor did the County charge him millions of dollars. He paid administrative costs of $3,747.29 (later reduced to $795.92) to settle, and obtained an after-the-fact grading permit for his previous unpermitted grading. Pet. App. at 68a, 231a [FAC at ¶ 562].

The County fines no one "millions of dollars for basic permitting and land-use violations" as the Petition asserts. Pet. at 3, 5. It fined **none** of these Petitioners. For example, Petitioners' assertion the Thomases have been fined $1,080,000 is simply false. Pet. at 7. The district court concluded the Thomases have not been fined any amount. Pet. App. at 92a.

Nor were the Thomases ordered to destroy what the Petition characterize as a garage "simply because of the alleged nexus to cannabis … ." (Pet. at 7.) The "barn" was constructed without inspections or permits and is hazardous. Inspection found " 'a three-story, seven-room wooden building with metal sheathing, on a pier-and-post foundation' with a measured footprint of 3,780 sq. ft., a total effective floor space of 7,956 sq. ft., and with numerous indicia of having been used as an industrial-scale cannabis production facility" including " 'remnants of cannabis

… on the floor of every space within the building.' " Pet. App. at 60a. Additionally, the inspector noted:

> [N]one of the stairwells had proper railing or hand grips … none of the six doors in the rear of the building – three on the first floor and three on the second floor – opened to landings; and, [] the only safety measure keeping a person from walking out of a second story door and falling was tape.

Pet. App. at 60a–61a. A picture of this "garage" appears next. Note the gap between the structure and the adjacent trees — too narrow for fire access.

2-ER-124.

The County had **ample** cause to order the building demolished. Nevertheless, the County changed its policy, well before the Thomases sued, to allow owners of such buildings to keep them for non-cannabis uses if they can be brought up to code standards. Pet. App. at 61a. The Thomases expressed interest in doing so, but have never applied for a permit. Pet. App. at 61a–64a. Regardless of its relation to cannabis activity, no landowner has a right to retain an unpermitted and unsafe structure in violation of building and safety codes. And the Thomases knew what they were buying. Pet. App. at 177a, 179a, 183a [FAC at ¶¶ 267, 276, 303]. As noted in the district court's order dismissing the case, the complaint's allegations are far removed from the truth of the County's efforts to persuade Petitioners to bring their properties into compliance with state and local law.

The County did not unilaterally decide to wait several years before setting a hearing, either. Pet. at 8. As the district court explained, delays resulted from Petitioners' requests for additional time to bring their properties into compliance. Pet. App. at 109a ["Plaintiffs themselves have occasioned most of the delay of which they now complain"]. Disruptions caused by the COVID-19 epidemic played a role, too. Sadly, Petitioners now characterize the County's attempts to be accommodating and to collaborate as nefarious. Petitioners assert the County's motive throughout these proceedings is to generate revenue. Pet. at 9. If so, continuing their cases for years while collecting no fines seems a poor strategy. See Pet. App. at 120a ["clear from Graham's code enforcement

matter, the County has no interest whatsoever in lining its pockets with penalty money — instead, its only interest is in securing compliance with its abatement orders and bringing noncompliant properties into compliance with its land use code."].

And the record reflects no Humboldt County code-enforcement officer bragging that enforcement actions are decided by hearing officers who work for the County and have never ruled against it. Pet. at 5, 9. These are unproven and contested allegations. Pet. App. at 167a–168a. The operative pleading admits these disputes. Pet. App. at 213a [FAC at ¶ 488a]. Moreover, due process entitles Petitioners to an unbiased hearing officer, and affords remedies if that right is denied. E.g., *Haas v. Cnty. of San Bernardino*, 27 Cal. 4th 1017, 1026, 45 P.3d 280 (2002) citing *Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

The assertion the County assumes all unpermitted development is for cannabis cultivation is also incorrect. Pet. at 6. Illegal cultivation undoubtedly caused most violations for which Petitioners were cited:

- The Thomases knew they were buying a site out of compliance with local laws due to previous cannabis commerce. Pet. App. at 177a, 179a, 183a [FAC at ¶¶ 267, 276, 303]. An inspection showed the remains of a commercial cannabis operation, including the remnants of cannabis. Pet. App. at 60a–61a.

- The County learned of the extensive violations on Olson's property after police executed a search warrant revealing a large cannabis operation. Pet. App. at 69a–70a. Olson bought properties near her home with actual knowledge of previous cannabis activity, too. Pet. App. at 200a [FAC at ¶¶ 413, 415, 416].

- Similarly, Glad does not dispute the code violations on his property resulted from the previous owner's cannabis cultivation, and had reason to know of the illegal cultivation when he acquired his land. Pet. App. at 75a–77a; 207a–208a [FAC, ¶¶ 461, 464].

As to Graham, he admitted he created a pond on his site without permits or a professional design to prevent nuisances. Pet. App. at 191a–192a [FAC at ¶ 362]. Although the County " 'had evidence that [the] grading was done with the intent to support cannabis infrastructure,' " (Pet. App. at 66a), Graham settled his case with the County for a few hundred dollars in after-the-fact permit fees. Pet. App. at 198a–199a [FAC at ¶¶ 399–403, 406–408]. Petitioners are plainly not "innocent victims." Pet. at 7. Rather, all purchased their properties with actual or constructive notice of significant code violations, or in Graham's case, is himself responsible for them. Buying a property "improved" with illegal structures on the cheap may look like a bargain, but it is taking on the burden to make the property safe and lawful so as to be a good neighbor.

REASONS FOR DENYING THE PETITION

A. The Case is in the Pleading Stage, and Presents a Poor Vehicle for Review

The Petition concedes, as it must, the nascent character of this dispute: the Ninth Circuit remanded most claims, no party sought a stay, and discovery is just commencing. Pet. at 10. The Seventh Amendment issue was not seriously briefed by either party and was touched upon only in passing by the 9th Circuit. Pet. at 10. Indeed, the 9th Circuit's three-sentence discussion of the issue states: "we do not address the merits of the claim." Pet. App. at 12a. Nor did any party brief *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 144 S. Ct. 2117, 219 L. Ed. 2d 650 (2024) — decided after the April 9, 2024 oral argument before the Ninth Circuit — although Petitions did give notice of it pursuant to Federal Rule of Appellate Procedure 28(j).

Review of interlocutory orders is disfavored "unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 384, 13 S. Ct. 758, 37 L. Ed. 486 (1893). "The lack of finality in the judgment below may 'of itself alone' furnish 'sufficient ground for the denial of the application.' " *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258, 36 S. Ct. 269, 60 L. Ed. 629 (1916); see also *Mount Soledad Mem'l*

Ass'n v. Trunk, 567 U.S. 944, 945, 132 S. Ct. 2535, 183 L. Ed. 2d 692 (2012) (Alito, J., concurring).

Even when the Court sees a review-worthy issue, it has denied certiorari where the record is underdeveloped, as factual uncertainty can hamper analysis of petitioners' claims. See, e.g., *Morris Cnty. Bd. of Chosen Freeholders v. Freedom From Religion Found.*, 586 U.S. 1213, 1216, 139 S. Ct. 909, 203 L. Ed. 2d 425 (2019) (Kavanaugh, J., statement). Granting certiorari is particularly inappropriate at the pleading stage, as the correct resolution of important issues "is more likely to result from the study of a full factual record than from a review of mere unproven allegations in a pleading." *Nike, Inc. v. Kasky*, 539 U.S. 654, 664, 123 S. Ct. 2554, 156 L. Ed. 2d 580 (2003).

Justice Brandeis famously observed that the Court has developed, "for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision." *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346–47, 56 S. Ct. 466, 80 L. Ed. 688 (1936). Among these,

> [t]he Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it." [Citations] "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."

Id. In another statement of the rule:

> If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such [questions are] unavoidable.

Spector Motor Serv. v. McLaughlin, 323 U.S. 101, 105, 65 S. Ct. 152, 89 L. Ed. 101 (1944). The Court has repeatedly named this "a fundamental rule of judicial restraint." *Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g, P.C.*, 467 U.S. 138, 157, 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984).

These considerations are acute here, where the allegations in Petitioners' complaint are vigorously contested. The district court was convinced upon a review of the County's code enforcement files —the authenticity of which Petitioners do not question — that the pleadings' allegations could not be proven:

> As far as factual allegations go — Plaintiffs' FAC paints an implausible picture of the events underlying the above mentioned claims. [Citation] Despite the FAC's length, overlooking its irrelevant content, and its conclusory and implausible assertions — and in light of the materials of which the court is taking judicial notice — it becomes clear, as set forth *infra*, that the underlying facts do not, and simply

> cannot, entitle these Plaintiffs to any relief against these Defendants.

Pet. App. at 53a. The district court's order detailed the many ways the allegations simply did not reflect the facts, including:

- The Petition omits significant information about Olson's case and "attempts to paint an inaccurate portrait of these events by amassing the various speculative proposed penalties together … ." Pet. App. at 75a.

- The Thomases have never been named in a notice of violation. Pet. App. at 92a, 110a.

- All Petitioners "(either knowingly or with constructive knowledge) purchased properties with presumably obvious pre-existing code violations — in other words, they all bought their way into existing code enforcement matters." Pet. App. at 92a, 119a.

- Petitioners' procedural due process allegations "are all either implausible, irrelevant, conclusory, or are based on unreasonable inferences or unwarranted deductions." Pet. App. at 104a.

- No Petitioner was charged "up to $4,500 for an administrative hearing or a compliance agreement … ." Pet. App. at 107a. All fines are merely proposed penalties which no owner has yet had to pay. Pet. App. at 120a.

- Petitioners' "assertions that these investigations were inadequate, or without regard for probable cause, or based on old satellite images [citation] are conclusory and contradicted by the record … ." Pet. App. at 108a.

- The County does not refuse to toll the accrual of fines, as all fines are merely "proposed" and "can be reduced or eliminated at several junctures in the administrative process … ." Pet. App. at 108a.

- Petitioners "have repeatedly delayed their own hearings by expressing interest in resolving their cases. Thus, [Petitioners] themselves have occasioned most of the delay of which they now complain." Pet. App. at 109a–111a.

- "[T]he County used various investigative methods (including a criminal search warrant) to determine that these unpermitted structures were erected in violation of applicable building, plumbing, and / or electrical codes." Pet. App. at 113a. The County did not rely on aerial images alone. *Id.*

- Contrary to Petitioners' assertions, each of the "[proposed] compliance agreements here impose conditions closely tailored to the County's goal to enforce its laws, such as inspections to confirm compliance, corrective actions including obtaining permits, limiting transfer of property until compliance is

> achieved, and imposing fines [if] compliance does not follow … ." Pet. App. at 127a.

As it stands, the Court would be left to decide a case of great importance on disputed and incomplete facts. Any cert-worthy issue here should await development of a full record.

> Finality as a condition of review is an historic characteristic of federal appellate procedure. It was written into the first Judiciary Act and has been departed from only when observance of it would practically defeat the right to any review at all.

Cobbledick v. United States, 309 U.S. 323, 324–25, 60 S. Ct. 540, 84 L. Ed. 783 (1940). And these code enforcement matters may resolve without need to explore the Seventh Amendment. Petitioners assert violations of substantive and procedural due process, unconstitutional exactions, and excessive fines, too. Pet. App. at 52a, 134a & 214a–215a [FAC at ¶¶ 12, 488b]. Success on any of these may provide Petitioners the relief they seek without reaching novel questions under the Seventh Amendment.

B. Petitioners' Claimed Injuries are Unripe

The Ninth Circuit reversed the district court's decision to dismiss based largely on the forgiving standard of review of Rule 12 motions at the pleading stage. Pet. App. at 3a, 6a, 9a, 28a, 29a, 32a, 39a, 47a.

However, the district court's findings highlight significant, unresolved ripeness issues:

- The County's fines are "proposed"; none has been levied against Petitioners, as all have requested appeals (or, in Graham's case, settled). Pet. App. at 90a. "No party has actually paid a fine." Pet. App. at 91a–92a.

- The County has rejected no permit application of any Petitioner. Pet. App. at 96a. Only Graham applied for a permit, which the County granted. Pet. App. at 109a, 121a. "[N]o party has otherwise been deprived of any other property; the unripe suggestion that non-remedial land use permits have been denied has never been tested by an actual application for one (let alone an actual denial) … ." Pet. App. at 108a–109a.

- "[B]ecause no [Petitioner] has been subjected to any deprivation of any constitutionally-protected liberty or property interest, or any denial of adequate procedural protections, it cannot be plausibly contended that any of them have suffered any procedural due process violations … ." Pet. App. at 111a. The same applies to claims of unconstitutional exactions under the Takings Clause. Pet. App. at 127a.

Thus, not only does this case present a poor vehicle to explore the incorporation of the Seventh Amendment because the Ninth Circuit opinions were based on the pleadings (and discovery is only now

beginning) — the underlying facts are underdeveloped and unripe. Pet. App. at 213a [FAC at ¶ 488a] [admitting County's code enforcement practices are unresolved factual disputes]. To meet standing's injury-in-fact prong, a plaintiff must demonstrate "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). A future, factual Rule 12(b)(1) motion, or a motion for summary judgment, or trial may establish no actual injury to Petitioners. See, e.g., *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (difference between Rule 12(b)(1) facial and factual attacks); Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006) ("The objection that a federal court lacks subject-matter jurisdiction … may be raised at any stage in the litigation, even after trial and the entry of judgment.").

And if these code enforcement cases are allowed to run their course, as they may do in tandem with this suit, they are likely to resolve without need for further litigation — as for Graham. Significantly, the County is amending its code enforcement procedures ordinance (with adoption slated for July 8, 2025 and effectiveness 30 days thereafter), which is likely to moot many of Petitioners' claims.[3] The new ordinance explains:

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[3] The amending ordinance and associated staff report are the subject of a request submitted with this brief for permission to

- Fines do not accrue until after 1) the period to appeal the notice of violation has lapsed, 2) an action by the hearing officer with no timely appeal for judicial review, or 3) a final non-appealable court action. [new HCC § 352-5.]

- Fines may be imposed only for an owner's own conduct. [new HCC § 352-3(t).]

- Fees, fines and costs are capped at one-half a property's fair-market value, and a hearing officer or court may reduce or eliminate some or all of them to comply with the Eighth Amendment or to do substantial justice. [new HCC § 352-3(m).]

- Any penalties are tolled while an owner works to remedy a violation. [new HCC § 352-5(b).]

- Corrective permits may issue to correct any violations identified on a property. [new HCC § 352-5(h).]

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lodge post-record evidence. They also appear at: < https://humboldt.legistar.com/View.ashx?M=A&ID=1267808&GUID=4A0BBB1C-C749-4499-B28D-0BBA8766F680 > (as of July 3, 2025). This is item 9 on the Board of Supervisors' July 8th meeting. The amended ordinance is local law of which the Court may take notice. E.g., *Haley v. Donoghue*, 116 U.S. 1, 6 S. Ct. 1, 29 L. Ed. 535 (1885). The staff report is noticeable legislative history. E.g., *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012)

- An appeal hearing must be held within 60 days absent the owner's consent for more time to prepare for hearing. [new HCC § 352-5(j).]

While declarative of current law and practice, these changes address drafting issues Petitioners seized upon. They may moot Petitioners' claims, or at the very least, narrow the issues and present a more robust record for judicial review. However, the County cannot provide for an appeal to a jury, as California Government Code section 53069.4 limits judicial review of the administrative penalties it authorizes to superior court bench trials. But a Seventh Amendment claim can be raised in that setting, as California's superior courts are courts of general jurisdiction. Cal. Const. art. VI, § 10.

C. Petitioners Present Only a Facial Challenge, Which Counsels Against Certiorari

Petitioners present no as-applied challenge under the Seventh Amendment. None of the named petitioners has actually had an administrative hearing before a hearing officer (due to their own inaction). Pet. App. at 63a, 68a, 75a, 77a. And none has appealed an administrative decision to a superior court or sought assistance from such a court to accelerate a hearing. *Id.* Nor did any ever demand a jury trial before suing here.

The County has not actually deprived these Petitioners of the putative right to a jury trial under the Seventh Amendment. Petitioners can therefore

only cite the County's Code and make a facial attack on the state law-authorized administrative procedure it provides, under which all their cases remain in the earliest stages. Thus, Petitioners can only prevail by "establish[ing] that no set of circumstances exists under which the [ordinance] would be valid … ." *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). Such facial challenges are disfavored, and a long line of this Court's precedent counsels against certiorari here.

> Although passing on the validity of a law wholesale may be efficient in the abstract, any gain is often offset by losing the lessons taught by the particular, to which common law method normally looks. Facial adjudication carries too much promise of 'premature interpretatio[n] of statutes' on the basis of factually barebones records.

Sabri v. United States, 541 U.S. 600, 608–09, 124 S. Ct. 1941, 158 L. Ed. 2d 891 (2004), citing *United States v. Raines*, 362 U.S. 17, 22, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960). As with interlocutory challenges, "[f]acial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither " 'anticipate a question of constitutional law in advance of the necessity of deciding it' " nor " 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' " *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

> Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people."

Id. at 451, citing *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006).

It is unlikely that Petitioner can show here that the County's cannabis code enforcement system is unconstitutional in all its applications. At bottom, the County's enforcement action attempts to enjoin public nuisances, a paradigmatic suit in equity to which the jury trial right does not apply. *Tull v. United States*, 481 U.S. 412, 423, 107 S. Ct. 1831, 95 L. Ed. 2d 365 (1987). Petitioners assert the possibility of fines makes this "a core Seventh Amendment claim" (Pet. at 28), but any such argument must await an as-applied challenge. Not all civil penalties trigger the jury right, even at the federal level. The Seventh Amendment "has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law." *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48, 57 S. Ct. 615, 81 L. Ed. 893 (1937). For example, Graham, the only Petitioner to pay the County anything, paid less than $800 for a remedial grading permit, and no fines. Pet.

App. at 68a. And the County (and courts) must consider a wide range of factors when imposing a penalty under the Humboldt County Code, including equitable considerations such as efforts to remedy a violation. HCC § 352-6. Such equitable factors are beyond a jury's province. *See Millennia Hous. Mgmt. v. United States Dep't of Hous. & Urb. Dev.*, No. 1:24-CV-02084, 2025 WL 1222589, at *9 (N.D. Ohio Apr. 28, 2025) (applying *Jarkesy*).

The Court should await an as-applied challenge before determining whether the Seventh Amendment, and *Jarkesy,* properly apply to the states and to land-use and similar disputes before their myriad local governments. That challenge may come from these Petitioners, if they remain aggrieved following administrative hearings and judicial review. But it does not come now.

D. Petitioners Have Adequate, and Unexhausted, State Judicial Remedies

As the Petition concedes, state and municipal dispute resolutions have "many unique features" (Pet. at 10, 23) not typical of the questions post-incorporation courts will face. These include the practice of many States to allow non-unanimous civil jury verdicts. And the very low $20 threshold in the Seventh Amendment for the jury right, requiring a reimagining of small claims court — if need for it survives a flight to less costly private dispute resolution forums that wholesale incorporation may

engender. Pet. at 21–22. The Petition agrees it may be difficult to "map" Seventh Amendment jurisprudence "well to the varied state systems." Pet. at 19. Thus, before attempt is made to incorporate the Seventh Amendment against America's many, varied local governments, Petitioners should exhaust their state judicial remedies here and develop a better record for review.

Local procedure allows prompt judicial review, albeit without a jury (at least until a California court has opportunity to apply *Jarkesy*). The Humboldt County Code provides that "[a]ll final administrative orders made pursuant to the administrative civil penalty procedures set forth in this Chapter shall be subject to review only as provided in California Government Code Section 53069.4 and California Code of Civil Procedure Section 1094.6." Pet. App. at 245a [HCC § 352–2(c).] California Government Code section 53069.4 allows judicial review of any final administrative order or decision by a local agency "regarding the imposition, enforcement, or collection of the administrative fines or penalties" California Government Section 53069.4 authorizes. Cal. Gov't Code § 53069.4(b)(1). Any such appeal is a limited civil case by which the superior court conducts a de novo review of a local agency's file. *Id.*

Alternatively, an aggrieved landowner may petition for a writ of administrative mandate under California Code of Civil Procedure sections 1094.5 and 1094.6. Writ relief is available, too, to compel the County to set hearings if it is dilatory. Cal. Civ. Proc. Code § 1085 (West); *Cape Concord Homeowners Assn.*

v. City of Escondido, 7 Cal. App. 5th 180, 189, 212 Cal. Rptr. 3d 490 (2017) ("Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion."). Petitioners may achieve the relief they request, without intervention by federal courts, by exhausting these remedies.

Allowing the parties to complete the state procedures would also have the benefit of correctly situating this case, should the Court still think it review-worthy. The Humboldt County ordinances do not operate in isolation. Rather, they are authorized by California Government Code section 53069.4. Any Seventh Amendment challenge is appropriately a challenge to that state law which governs the manner of state court review of local agency action. Requiring a challenge to California Government Code section 53069.4 would allow the Court to consider this issue in a fuller context, rather than Petitioners' narrow attack on the County's idiosyncratic ordinance aimed at the particular ills of illegal cannabis operations in California's Emerald Triangle.[4] *See* Pet. App. at 39a ["Plaintiffs finally allege that the **unique** nature of this administrative penalty scheme causes even more fines and administrative fees to accrue over time." emphasis added.]

[4] Context for this term appears at
< https://en.wikipedia.org/wiki/Emerald_Triangle > (as of July 3, 2025).

Attacking California Government Code section 53069.4 directly after the claim has been exhausted would not only avoid piecemeal litigation across all of California's thousands of local agencies, it would involve the State of California as defendant, a party much better equipped to defend this claim than the County. It can also allow California state courts to entertain these claims and develop a record for this Court's review, should it be warranted. While Petitioners have attracted public interest counsel and well-funded amici, the County is small, poor, and rural and is less well positioned to adequately brief these issues. Pet. App. at 138a [FAC at ¶¶ 31, 33]. In *Jarkesy*, the Court awaited a robust and complete appellate record on which the Solicitor General could defend the case for the United States. The Court should seek equally well-situated parties and an adequate record before deciding whether to expand *Jarkesy* to the states.

E. Petitioners' Culpability Makes This a Poor Vehicle

Petitioners are culpable — they either made the illicit "improvements" (Graham) or bought with actual or constructive knowledge of them. Some are obvious safety hazards that Petitioners have refused to correct, such as the unpermitted tunnel under a habitable building and lack of railing or landings on upper-floor openings in a multi-story grow barn. Pet. App. at 60a–61a, 72a. Other unpermitted improvements were constructed within streamside management areas, posing a risk to local waterways

and wildlife. Pet. App. at 202a, 255a [FAC at ¶¶ 427, 469]. And in mountainous, forested Humboldt County, any unpermitted construction poses an elevated risk of wildfire. Even if some of their misconduct is that of omission, not commission, it is misconduct nevertheless. If one could avoid responsibility to cure illegal conditions of land simply by selling it to one fully aware of the violations, few property maintenance laws could be enforced.

Further, the underlying activity — commercial cannabis production — remains illegal under federal law. 21 U.S.C. § 812(b)(1)(A)–(C), 822, 823, 841(a)(1); *Gonzales v. Raich*, 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). The relief Petitioners seek would enable that illicit conduct, as by maintaining a high-floor, three-story, well-ventilated warehouse (colloquially, a "grow barn") in the middle of a forest, with unsafe setbacks from tall trees, with no other economic use in this region but cannabis production. Pet. App. at 60a–61a. Few people need a three-story structure for hobbyist woodworking. Review of Seventh Amendment incorporation should await a case with more typical facts.

F. Incorporation of the Seventh Amendment Should Await Application of *Jarkesy*

Petitioners argue Seventh Amendment incorporation is "ripe for review following last term's decision in *Jarkesy*," and that

> dual consideration [in state and federal courts] will help avoid the problems that could arise if the law develops exclusively in the federal context and is later incorporated wholesale onto the many unique features of state and municipal proceedings … .

Pet. At 5. They propose to have the lower courts "consider all at once how the right applies in both the federal *and* state systems." *Id*., original emphasis. This Court's practice, and common sense, suggest the opposite.

Where the Court has decided a significant case such as *Jarkesy,* it has found it appropriate to wait for case law applying that decision to develop before broadening its reach. *E.g., Morris County Board of Chosen Freeholders* at 1216 (Kavanaugh, J., statement.) Here, as the Petition acknowledges, the implications of *Jarkesy* are just being explored by federal administrative agencies and Article III courts. Pet. at 5. The 49 states with state constitutional jury rights will, doubtless, consider its implications for their law, too. Reference to that developing law will not only help the Court analyze the impact of incorporation on local and state agencies, a robust body of post-*Jarkesy* law will serve as a vital guide to the states and federal courts when and if the Seventh Amendment is incorporated. Petitioners argue here, not for efficiency, but chaos.

Nor do circumstances suggest urgency. As Petitioners acknowledge, the non-incorporation of the

Seventh Amendment has been the law for over a century, since *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 36 S. Ct. 595, 60 L. Ed. 961 (1916). There is no split among the circuits in need of resolution. And all but Louisiana already guarantee the right to a civil jury trial by their constitutions and the Bayou State does so by statute. Pet. at 16, 21.

For example, California Constitution, article 1, section 16 preserves that right, providing for 12-person juries in all civil causes unless waived. The California Supreme Court has found that right to a civil jury trial to be "fundamental," "inviolate," and "sacred." *Grafton Partners v. Superior Ct.*, 36 Cal. 4th 944, 951, 956, 116 P.3d 479 (2005). Similar to this Court's application of the Seventh Amendment's "suit at common law" requirement in *Jarkesy, Tull,* and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26 (1989), California has interpreted "[t]he right to a jury trial for civil actions [to be] generally limited to those causes of action (and their analogues) that were historically triable in a court of law." *Hoopes v. Dolan*, 168 Cal. App. 4th 146, 155, 85 Cal. Rptr. 3d 337 (2008).

California adopted its own version of the "public rights" doctrine, finding the right to a civil jury trial does not apply to an administrative adjudication where

> the challenged activities are authorized by statute or legislation, and are reasonably necessary to, and primarily directed at, effectuating the

> administrative agency's primary, legitimate regulatory purposes … ."

McHugh v. Santa Monica Rent Control Bd., 49 Cal. 3d 348, 380, 777 P.2d 91 (1989). In formulating the doctrine, California relied largely on this Court's holding in *Atlas Roofing Co., Inc. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, 97 S. Ct. 1261, 51 L. Ed. 2d 464 (1977). *McHugh,* 49 Cal. 3d at 380. California and other states should have opportunity to review the contours of their own public rights doctrines in light of *Jarkesy* before this Court decides whether to incorporate the Seventh Amendment.

Thus, the Petition is wrong to contend there can be no percolation if this Court does not incorporate the Seventh Amendment into the Fourteenth promptly on *Jarkesy's* heels. Pet. at 25. Percolation is occurring in the federal courts (Pet. at 5) and state courts, too. Pet. at 24–25. Incorporation now would simply invite thousands of new cases a year, at both the state and federal level, challenging the constitutionality of everything from building code violations to parking fines.

Nor need the Court be concerned that it will lack future opportunities to consider incorporation of the Seventh Amendment. This decade alone, the Court has rejected eight other petitions for certiorari on this question:

- Petition for Writ of Certiorari, *Wynn v. Associated Press*, 145 S. Ct. 1434, 221 L. Ed. 2d 556, 2025 WL 404611 (2025);

- Petition for Writ of Certiorari, *Allco Renewable Energy Ltd. v. Agency of Nat. Res.*, 145 S. Ct. 1139, 220 L. Ed. 2d 435 (2025);

- Petition for Writ of Certiorari, *Dakota Territory Tours, ACC v. Sedona-Oak Creek Airport Auth., Inc.*, 142 S. Ct. 2712, 212 L. Ed. 2d 780 (2022);

- Petition for Writ of Certiorari, *Eric E. v. Los Angeles Cnty. Dep't of Child. & Fam. Servs.*, 142 S. Ct. 2710, 212 L. Ed. 2d 779 (2022);

- Petition for Writ of Certiorari, *Albritten v. California Dep't of Forestry & Fire Prot.*, 141 S. Ct. 376, 208 L. Ed. 2d 97 (2020);

- Petition for Writ of Certiorari, *Recreational Data Servs., Inc. v. Trimble Navigation Ltd.*, 583 U.S. 1169, 138 S. Ct. 1272, 200 L. Ed. 2d 419 (2018);

- Petition for Writ of Certiorari, *S.S. ex rel. Schmidt v. Bellevue Med. Ctr. L.L.C.*, 583 U.S. 1013, 138 S. Ct. 506, 199 L. Ed. 2d 386 (2017);

- Petition for Writ of Certiorari, *Powers v. Freihammer*, 580 U.S. 870, 137 S. Ct. 189, 196 L. Ed. 2d 127 (2016).

Two of these came in the last year — after *Jarkesy*. The Court can revisit this issue when it

chooses and can await both a fuller body of Seventh Amendment law and a better vehicle.

Caution is important here not only given the impacts on local government and its ability to enforce laws to protect public health and safety, but also to safeguard the interests of those accused of code violations and their neighbors. In *Jarkesy*, petitioners were sophisticated individuals and entities that could be expected to litigate aggressively regardless of forum. *Jarkesy* at 118–119. This will be true of many, if not most, federal actions. Conversely, those who complain of or are accused of code violations in rural Humboldt County are generally individuals and small businesses, many poor, and some unsophisticated — as Petitioners describe themselves. Pet. App. at 176a–177a, 187a, 199a, 206a–207a. The current process is designed to allow maximum flexibility for the County to resolve these issue with landowners. A system where every case must be tried to a jury would remove much of that flexibility — and greatly increase cost. The County cannot administratively empanel a jury, so it would need to take each violation to court. Fixed-income retirees such as the Thomases (and any complaining neighbors) would have to navigate the court system *pro per*, or hire lawyers (if they can find and afford them).[5] The County would need to employ

[5] The California State Bar reports 249 active licensed attorneys in Humboldt County, to serve a population of 135,000. In 2024, it published the "California Justice Gap Study" which found Californians do not receive any or enough legal help for 85 percent of their civil legal problems, with costs and availability of counsel the primary barriers. State Bar of California, *2024 California Justice Gap Study* (June 2025), available at

its own lawyers earlier and in a primary role, expending public resources it then might need to recover as part of any settlement.

Rather than avoiding "ruinous fines," the end result is likely to be exponentially greater costs and complexity, borne primarily by citizens — both property owners accused of violating local land use and safety laws, and their neighbors who seek relief from excess traffic on rustic (often unpaved) roads, misappropriation and pollution of shared streams, noxious odors (cannabis is known colloquially as "skunk"), dangerous chemicals, security provided by guns and dogs, and the other consequences of illicit cannabis commerce, which often operates in cash due to limited access to banking service given the federally illicit nature of this business. The Court may ultimately decide that the Seventh and Fourteenth Amendments demand no less, but it need not rush to that decision while case law that may soften the blow is still nascent.

The Petition's arguments that this is the right vehicle do not persuade. They claim this is a good vehicle because they have, unilaterally, chosen to raise but one issue. Pet. at 27. But, of course, they raise procedural and substantive due process claims, claims of unconstitutional conditions under the regulatory takings aspect of the Fifth Amendment, and excessive fines, too, and all these are active in the district court on remand. Pet. at 10. They claim these

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< https://publications.calbar.ca.gov/justice-gap-study/ > as of July 3, 2025.

other claims are easily severed from the Seventh Amendment claim because neither party sought a stay. Pet at 22. But such a request can be expected if certiorari is granted, not least because this small, rural county cannot afford a two-front battle. Moreover, this argument allows unilateral litigation tactics — raise one issue, don't seek a stay — to make a good vehicle of **any** case. Every sow's ear, a silk purse. Further, the Petition contends inconsistently that decision here will be "outcome determinative," and that many issues will remain to be determined on remand. Pet. at 28. It also contends that "granting the Petition does not require the Court to resolve the merits." *Id*. It seems the Petition's authors could not convince even themselves that certiorari can determine the outcome here.

CONCLUSION

Whatever the merits of Petitioners' contention that the Fourteenth Amendment was intended by its framers and ratifiers to impose the Seventh Amendment and its $20 threshold for a jury in a civil case on the 50 states and their myriad local governments, this is not the right time or vehicle to entertain the question. *Jarkesy* is bound to be "disruptive," as the Petition concedes. Pet. at 22. That disruption is better accommodated in litigation involving the federal government and its agencies, which have far more resources to aid the courts in finding the law's forward path than rural Humboldt County, California, population 134,000. And this is a poor vehicle even if the Court views the question as

timely. It is based on an untested pleading with an implausible, indeed feverish, rendition of events. If those allegations were true, this case would a unicorn. They will not be proven, as the district court recognized, and are partly disproved by the Petition itself (which concedes Petitioner Graham's unpermitted drainage work and the other Petitioners' knowledge they bought tainted sites). The appeal is interlocutory with hotly disputed facts rooted in federally illegal conduct — commercial cannabis cultivation. The disputes are unripe in the sense that the challenge is facial and no Petitioner has resorted to local or state court remedies. For any or all these reasons, the County respectfully urges the Court to deny the Petition. This question will present itself again, soon, no doubt, and on a far better record.

Respectfully submitted,

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APPENDIX

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APPENDIX — RELEVANT STATUTORY PROVISIONS

STATE OF CALIFORNIA GOVERNMENT CODE SECTION 53069.4

53069.4. (a)(1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. 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. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2)(A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may declare commercial cannabis activity

undertaken without a license as required by Division 10 (commencing with Section 26000) of the Business and Professions Code to be a public nuisance and provide for the immediate imposition of administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists as a result of, or to facilitate, the unlicensed cultivation, manufacturing, processing, distribution, or retail sale of cannabis for which a license is required. This subparagraph shall not be construed to apply to cannabis cultivation or activity that is lawfully undertaken pursuant to Section 11362.1 or 11362.5 of the Health and Safety Code, to commercial cannabis activity undertaken pursuant to a license under Division 10 (commencing with Section 26000) of the Business and Professions Code and applicable state regulations, or to a person exempt from licensure pursuant to Section 26033 of the Business and Professions Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance may impose the administrative fines and penalties upon the property owner and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and may hold them jointly and severally liable for the administrative fines and penalties.

(D) Administrative fines or penalties that are immediately imposed pursuant to an ordinance adopted under subparagraph (B) shall not exceed one thousand

dollars ($1,000) per violation and shall not exceed ten thousand dollars ($10,000) per day. This subparagraph shall not be construed to limit the immediate imposition of larger fines that are otherwise authorized by applicable law and shall not be construed to limit administrative fines or penalties that are imposed after notice and a reasonable time to correct pursuant to subparagraph (A).

(E) An ordinance adopted pursuant to subparagraph (B) shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.

(iii) The rental property owner or agent did not know the tenant was engaging in unlicensed commercial cannabis activity for which a license was required and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the unlicensed commercial cannabis activity.

(F) A local agency that passes an ordinance pursuant to subparagraph (B) may refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action pursuant to Chapter

5 (commencing with Section 17200) of Part 2 of Division 7 of, or Section 26038 of, the Business and Professions Code or any other applicable law.

(b)(1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

(Amended by Stats. 2023, Ch. 477, Sec. 1. (AB 1684) Effective January 1, 2024.)

Appendix

HUMBOLDT COUNTY CODE, CHAPTER 352

* * *

352-3. Definitions.

(a) *Administrative Costs.* Any and all costs relating to staff time expended in the performance of enforcement activities authorized under this Chapter, including, without limitation, obtaining title reports, recording documents, noticing Responsible Parties, scheduling and participating in further hearings, collection activities and other such costs.

(b) *Appellant.* Any Responsible Party that files an appeal of the Code Enforcement Unit's determination that a Violation has occurred or exists.

(c) *Attorney's Fees.* Any and all legal fees incurred by the prevailing party in any administrative proceeding to impose and/or recover administrative civil penalties pursuant to the provisions of this Chapter. Recovery of Attorney's Fees by the prevailing party is limited to those administrative proceedings in which the County of Humboldt elects, at the initiation of that individual proceeding, to seek recovery of its own legal fees. In no administrative proceeding shall an award of Attorney's Fees to a prevailing party exceed the amount of reasonable legal fees incurred by the County of Humboldt in the administrative proceeding.

(d) *Beneficial Owner.* Any mortgagee of record, beneficiary under a recorded deed of trust or the owner

or holder of any lease of record; provided, however, that the United States, the State of California and the County of Humboldt shall not be deemed to be Beneficial Owners by virtue of any lien for unpaid taxes.

(e) *Category 1 Violations.* Primarily procedural Violations that are committed through neglect or oversight and have a negligible impact on the health, safety, comfort and/or general welfare of the public.

(f) *Category 2 Violations.* Violations that are committed unintentionally through neglect or oversight and have a significant and/or substantial impact on the health, safety, comfort and/or general welfare of the public.

(g) *Category 3 Violations.* Violations that are committed intentionally or through inexcusable neglect and have a minimal impact on the health, safety, comfort and/or general welfare of the public.

(h) *Category 4 Violations.* Violations that are committed intentionally or through inexcusable neglect and have a significant and/or substantial impact on the health, safety, comfort and/or general welfare of the public. Category 4 Violations shall include, but not be limited to, the commercial cultivation of cannabis in Violation of any applicable local or state laws, regulations, policies, procedures, permits and agreements and any violation of building, health and safety, or zoning requirements that exists as a result of or to facilitate the illegal cultivation of cannabis.

(i) *Code Enforcement Investigator.* Any and all code enforcement officers assigned by the Humboldt County Code Enforcement Unit to correct Violations through the imposition of administrative civil penalties as set forth in this Chapter.

(j) *Code Enforcement Unit.* The Humboldt County Code Enforcement Unit, including any and all Code Enforcement Investigators employed thereby.

(k) *Completion Date.* The date on which a continuing Violation is corrected or otherwise remedied by the Responsible Party as set forth in this Chapter.

(l) *Costs.* Any and all costs and/or Attorney's Fees incurred during the performance of the enforcement activities authorized under this Chapter.

(m) *Imposition Date.*

(1) The date on which administrative civil penalties start to accrue, which shall not be more than ten (10) calendar days after service of a Notice of Violation and Proposed Administrative Civil Penalty.

(2) For repeat, subsequent or ongoing cannabis Violations or Violations that exist as a result of or to facilitate illegal cultivation of cannabis, the imposition of administrative civil penalties will start to accrue after service of a Notice of Violation and Proposed Administrative Civil Penalty. If all the following are found to be true by the Code Enforcement Unit or the court, then the date on which administrative civil

penalties start to accrue shall not be more than ten (10) calendar days after service of a Notice of Violation and Proposed Administrative Civil Penalty:

(A) A tenant is in possession of the Property.

(B) Owner or its agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(C) Owner or its agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the Owner or its agent to have actual notice of the illegal cannabis cultivation.

(n) *Owner.* The owner of record of the Property on which a Violation has occurred or exists whose name and address appears on the last equalized secured property tax assessment roll, or, in the case of any public entity, the representative thereof.

(o) *Premises.* Any lot or parcel of land upon which a building is situated, including any improved or unimproved portion thereof, and adjacent streets, sidewalks, parkways and parking areas.

(p) *Personal Property.* Articles of personal or household use or ornament, including, but not limited to, furniture, furnishings, automobiles and boats. As used herein the term "Personal Property" does not include intangible property such as evidence of indebtedness, bank accounts

and other monetary deposits, documents of title or securities.

(q) *Property.* Any Premises, Personal Property and/or Real Property located within the unincorporated area of Humboldt County.

(r) *Real Property.* Any lot or parcel of land, including any alley, sidewalk, parkway or unimproved public easement.

(s) *Responsible Party.* Any Owner, Beneficial Owner, person, business, company or other entity, and the parent or legal guardian of any person under eighteen (18) years of age, who has caused, permitted, maintained, conducted or otherwise allowed a Violation to occur.

(t) *Violation.* Any act or omission for which an administrative civil penalty may be imposed pursuant to this Chapter, including:

(1) Any failure to comply with the provisions of the Humboldt County Code.

(2) Any failure to comply with the provisions of any other uniform codes and/or ordinances adopted by the Humboldt County Board of Supervisors, including, but not limited to, building and zoning ordinances.

(3) Any failure to comply with any order issued by the Humboldt County Board of Supervisors or any other board, commission, department, hearing officer, examiner or official authorized to issue orders by the Humboldt County Board of Supervisors, including,

but not limited to, the Humboldt County Planning Commission, the Humboldt County Code Enforcement Unit, the Humboldt County Planning and Building Director, the Humboldt County Health and Human Services Director and the Humboldt County Health Officer.

(4) Any failure to comply with any condition imposed by any entitlement, permit, contract or environmental document issued or approved by the County of Humboldt. (Ord. 2138a, § 1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2576, § 5, 6/27/2017; Ord. 2646, § 2, 7/28/2020)

* * *

352-5. Imposition of Administrative Civil Penalty.

(a) Any and all Violations may be subject to an administrative civil penalty of up to ten thousand dollars ($10,000.00), or as allowed by applicable State law, whichever is higher, per calendar day up to and including the ninetieth (90th) calendar day. Administrative civil penalties may be imposed by the Code Enforcement Unit as set forth in this Chapter or the court if the Violation requires court enforcement without an administrative process.

(b) (1) In the case of a continuing Violation, the Code Enforcement Unit or the court shall provide the Responsible Party with a reasonable period of time, not to exceed ten (10) calendar days, to correct or

otherwise remedy the Violation prior to the imposition of the administrative civil penalty, except in situations in which the Violation creates an immediate danger to the health, safety and/or general welfare of the public.

(2) In the case of a continuing cannabis Violation or a Violation that exists as a result of or to facilitate illegal cultivation of cannabis, the Code Enforcement Unit or the court shall immediately impose the administrative civil penalty except if all of the following are found to be true by the Code Enforcement Unit or the court, then the Code Enforcement Unit or the court shall provide the Responsible Party with a reasonable period of time, not to exceed ten (10) calendar days, to correct or otherwise remedy the Violation prior to the imposition of the administrative civil penalty:

(A) A tenant is in possession of the Property.

(B) Owner or its agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(C) Owner or its agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the Owner or its agent to have actual notice of the illegal cannabis cultivation.

(c) Each calendar day that a Violation occurs, continues or exists between the Imposition Date and the Completion Date shall constitute a separate Violation up to the ninetieth (90th) calendar day.

(d) If a Violation occurs, continues or exists after ninety (90) days from the Imposition Date of the initial administrative civil penalty, an additional Notice of Violation can be served upon the Responsible Party as set forth in this Chapter.

(e) The imposition of administrative civil penalties pursuant to the provisions of this Chapter shall be in addition to any and all available criminal, civil, or other legal and/or equitable remedies established by local or State law. In addition, the County of Humboldt may withhold issuance of any licenses, permits and other entitlements to a Responsible Party on any project that is subject to unpaid administrative civil penalties. (Ord. 2138a, § 1, 12/3/ 1996; Ord. 2272, 4/23/2002; Ord. 2576, § 5, 6/27/2017; Ord. 2646, § 2, 7/28/2020)

352-6. Amount of Administrative Civil Penalty.

(a) The amount of the administrative civil penalty to be imposed shall be set by the Code Enforcement Unit or the court according to the following schedule:

(1) Category 1 Violations shall be subject to an administrative civil penalty of one dollar ($1.00) to one thousand dollars ($1,000.00) per calendar day. (Ord. 2138a, §1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2333, §1, 11/2/2004; Ord. 2576, § 5, 6/27/2017)

(2) Category 2 Violations shall be subject to an administrative civil penalty of one thousand dollars ($1,000.00) to three thousand dollars ($3,000.00) per calendar day. (Ord. 2138a, §1, 12/3/1996; Ord. 2272,

4/ 23/2002; Ord. 2333, §1, 11/2/2004; Ord. 2576, § 5, 6/27/2017)

(3) Category 3 Violations shall be subject to an administrative civil penalty of three thousand dollars ($3,000.00) to six thousand dollars ($6,000.00) per calendar day. (Ord. 2138a, §1, 12/3/1996; Ord. 2272, 4/23/ 2002; Ord. 2333, §1, 11/2/2004; Ord. 2576, § 5, 6/27/2017)

(4) Category 4 Violations shall be subject to an administrative civil penalty of six thousand dollars ($6,000.00) to ten thousand dollars ($10,000.00), or as allowed by applicable state law, whichever is higher, per calendar day. (Ord. 2138a, §1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2333, §1, 11/2/2004; Ord. 2576, § 5, 6/27/2017)

(b) In determining which Violation category a Violation should be placed, and the amount of the administrative civil penalty to be imposed, the Code Enforcement Unit or the court shall consider, without limitation, all of the following factors: (Ord. 2138a, §1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2576, § 5, 06/27/2017)

(1) The severity of the Violation's impact on the health, safety and/or general welfare of the public, including, without limitation, the type and seriousness of the injuries or damages, if any, suffered by any member of the public. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(2) The number of complaints received regarding the Violation at issue. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(3) The willfulness and/or negligence of the Responsible Party. In assessing the degree of willfulness and/or negligence, all of the following factors shall be considered:

(A) How much control the Responsible Party had over the events which caused the Violation to occur. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(B) Whether the Responsible Party took reasonable precautions against the events which caused the Violation to occur. (Ord. 2138a, § 1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(C) Whether the Responsible Party knew, or should have known, the impacts associated with the conduct which caused the Violation to occur. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(D) The level of sophistication of the Responsible Party in dealing with compliance issues. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(4) The number of times in which the Responsible Party has committed the same or similar Violations in the previous three (3) years. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(5) The amount of administrative staff time which was expended in investigating or addressing the Violation at issue. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(6) The amount of administrative civil penalties which have been imposed in similar situations. (Ord. 2138a, § 1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

(7) The efforts made by the Responsible Party to correct the Violation and remediate the impacts thereof. (Ord. 2576, § 5, 6/27/2017)

(c) The factors of willfulness and severity of impact are considered together in determining which category a particular Violation should be placed. For example, a Violation involving little impact could be determined to be a Category 2 Violation or a Category 3 Violation, depending on the degree of willfulness associated therewith. Similarly, an unintentional Violation could be determined to be a Category 1 Violation or a Category 2 Violation, depending on the severity of the impact arising therefrom. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

* * *

352-8. Contents of Notice of Violation and Proposed Administrative Civil Penalty.

The Notice of Violation and Proposed Administrative Civil Penalty shall contain all of the following:

(a) The name and last known address of each Responsible Party.

(b) A street address, legal description or other description sufficient to identify the Property on which the Violation occurred or exists.

(c) A description of the specific acts or omissions that gave rise to the Violation and the specific provision of each code, ordinance, regulation, condition or other legal requirement that has been violated and identification of the Violation category that the Violation falls within.

(d) An order to correct or otherwise remedy any continuing Violation within ten (10) calendar days after service of the Notice of Violation and Proposed Administrative Civil Penalty, except in situations in which the Violation creates an immediate danger the health, safety and/or general welfare of the public.

(e) A statement that each calendar day the Violation occurs, continues or exists between the Imposition Date and the Completion Date shall constitute a separate Violation up to the ninetieth (90th) calendar day.

(f) The amount of the proposed administrative civil penalty that will be incurred each calendar day the

Violation occurs, continues or exists between the Imposition Date and the Completion Date up to the ninetieth (90th) calendar day.

(g) A statement that the Responsible Party may file with the Code Enforcement Unit a written appeal of the determination that a Violation has occurred or exists and/ or the amount of the proposed administrative civil penalty within ten (10) calendar days after service of the Notice of Violation and Proposed Administrative Civil Penalty.

(h) A statement that an appeal of the Code Enforcement Unit's determination that a Violation has occurred and/ or the amount of the proposed administrative civil penalty must be prepared using the form provided with the Notice of Violation and Proposed Administrative Civil Penalty, and shall contain all of the following information:

(i) The name and current address of each Responsible Party.

(ii) A street address, legal description or other description sufficient to identify the Property on which the Violation occurred or exists.

(iii) A brief statement setting forth the Appellant's interest in the proceedings.

(iv) A brief statement of the material facts which support the Appellant's contention that no Violation occurred or exists and that an administrative civil penalty should not be imposed as a result thereof, if applicable.

(v) A brief statement of the material facts which support the Appellant's contention that the amount of the proposed administrative civil penalty is inappropriate under the circumstances, if applicable.

(vi) An address at which the Appellant agrees that any additional notices relating to the imposition of the proposed administrative civil penalty may be served by the Code Enforcement Unit.

(i) A statement that an appeal of the Code Enforcement Unit's determination that a Violation has occurred and/ or the amount of the proposed administrative civil penalty must be signed by the Appellant under penalty of perjury.

(j) A statement that, upon receipt of an appeal of the determination that a Violation has occurred and/or the amount of the proposed administrative civil penalty, the Code Enforcement Unit shall set the matter for hearing before a Hearing Officer appointed by the Humboldt County Board of Supervisors pursuant to California Government Code Section 27720 and issue a Notice of Administrative Civil Penalty Appeal Hearing as set forth in this Chapter.

(k) A statement that the date of the Administrative Civil Penalty Appeal Hearing shall be no sooner than fifteen (15) calendar days after the date on which the Notice of Administrative Civil Penalty Appeal Hearing is served on the Appellant.

(l) A statement that the imposition of the administrative civil penalty shall become final and the Code Enforcement

Unit shall acquire jurisdiction to collect full amount thereof and any and all Administrative Costs and/ or Attorney's Fees, as follows:

(i) Within ten (10) calendar days after service of the Notice of Violation and Proposed Administrative Civil Penalty, if an appeal of the Code Enforcement Unit's determination that a Violation has occurred, and/or an appeal of the amount of the administrative civil penalty, is not filed as set forth in this Chapter; or

(ii) Within twenty (20) calendar days after service of the Finding of Violation and Order Imposing Administrative Civil Penalty, if a request for judicial review of the Hearing Officer's imposition of the final administrative civil penalty is not filed with the Humboldt County Superior Court as set forth in this Chapter and California Government Code Section 53069.4(b)(1)-(2); or

(iii) Within ten (10) calendar days after service of the Humboldt County Superior Court's decision regarding the Hearing Officer's imposition of the final administrative civil penalty, if the Court finds against the Appellant.

(m) A statement that the final administrative civil penalty, along with any and all Administrative Costs and/ or Attorney's Fees associated therewith, may become a lien against the Property on which the Violation occurred or exists which has the same force, effect and priority of a judgment lien governed by the provisions of California

Code of Civil Procedure Sections 697.310, et seq., and may be extended as provided in California Code of Civil Procedure Sections 683.110, et seq.

(n) A statement that an additional Notice of Violation can be served upon the Responsible Party as set forth in this Chapter, if a Violation occurs, continues or exists after ninety (90) days from the Imposition Date of the initial administrative civil penalty. (Ord. 2138a, § 1, 12/3/1996; Ord. 2272, 4/23/2002; Ord. 2458, § 1, 8/23/2011; Ord. 2576, § 5, 6/27/2017; Ord. 2646, § 2, 7/28/2020)

352-9. Issuance of Notice of Administrative Civil Penalty Appeal Hearing by Code Enforcement Unit.

Upon receipt of a timely appeal of the determination that has a Violation has occurred and/or the amount of the administrative civil penalty by any Responsible Party upon whom a Notice of Violation and Proposed Administrative Civil Penalty was served, the Code Enforcement Unit shall set the matter for hearing before the Hearing Officer and serve a "Notice of Administrative Civil Penalty Appeal Hearing" upon each Appellant as set forth in this Chapter. The Notice of Administrative Civil Penalty Appeal Hearing may be combined with a Notice of Code Enforcement Appeal Hearing issued pursuant to the provisions of this Division. (Ord. 2138a, §1, 12/3/1996; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

* * *

352-12. Issuance of Finding of Violation and Order Imposing Administrative Civil Penalty by the Hearing Officer.

(a) Upon conclusion of the Administrative Civil Penalty Appeal Hearing, the Hearing Officer shall determine whether or not a Violation has occurred or exists as set forth in the Notice of Violation and Proposed Administrative Civil Penalty. If it is found that a Violation has not occurred, the Hearing Officer shall terminate the administrative civil penalty proceedings. If it is found that a Violation has occurred or exists, the Hearing Officer shall affirm, reduce or suspend the proposed administrative civil penalty in accordance with the criteria set forth in this Chapter. The Hearing Officer shall prepare, and serve upon each Responsible Party, a "Finding of Violation and Order Imposing Administrative Civil Penalty." The Finding of Violation and Order Imposing Administrative Civil Penalty may be combined with a Finding of Nuisance and Order of Abatement issued pursuant to the provisions of this Division. (Ord. 2138a, §1, 12/3/1996; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

(b) In situations where the Responsible Party has taken immediate steps to remedy a Violation that did not impact the health, safety or general welfare of the public, the Hearing Officer may reduce the administrative proposed administrative civil penalty or suspend a percentage of the Responsible Party's payment. If the Responsible Party complies with the terms and conditions of the payment suspension for a period of one (1) year after the date on which the Finding of Violation and Order Imposing

Administrative Penalty is served thereon, the Responsible Party will no longer be liable for the suspended amount. However, if the Responsible Party does not comply with the terms and conditions of the payment suspension set forth in the Finding of Violation and Order Imposing Administrative Civil Penalty, the suspended portion of the penalty shall become immediately due and payable. In no event shall an administrative civil penalty be reduced to an amount that is less than the minimum amount set forth in this Chapter for the Violation category imposed. (Ord. 2138a, §1, 12/3/1996; Ord. 2272, 4/23/ 2002; Ord. 2458, §1, 8/23/2011; Ord. 2576, § 5, 6/27/2017)

(c) A Finding of Violation and Order Imposing Administrative Civil Penalty issued by the Hearing Officer shall be final in all respects unless overturned or modified on appeal by the Humboldt County Superior Court. A Finding of Violation and Order Imposing Administrative Civil Penalty shall be accompanied by instructions for obtaining judicial review of the Hearing Officer's decision as set forth in California Government Code Section 53069.4(b)(1)(2). (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017)

352-13. Judicial Review of Finding of Violation and Order Imposing Administrative Civil Penalty.

(a) Appellant may contest the Hearing Officer's imposition of a final administrative civil penalty by either:

(1) Pursuant to California Government Code Section 53069.4(b)(1)-(2), an Appellant may file a request for judicial review in the Humboldt County Superior Court within twenty (20) calendar days after service of the Finding of Violation and Order Imposing Administrative Civil Penalty. The Appellant shall serve a copy of the request for judicial review of the Finding of Violation and Order Imposing Administrative Civil Penalty upon the Code Enforcement Unit either in person or by first class mail.

(2) Pursuant to California Code of Civil Procedure Section 1094.6, an Appellant may file a petition of writ of mandate within the time specified in Section 1094.6. The appeal of the Hearing Officer's imposition of a final administrative civil penalty shall be governed by California Code of Civil Procedure Section 1094.6, as such section may be amended from time to time.

(b) If the Humboldt County Superior Court finds against the Appellant, the Code Enforcement Unit may proceed to collect the administrative civil penalty as set forth in this Chapter.

(c) The failure to file a request for judicial review of a Finding of Violation and Order Imposing Administrative Civil Penalty in accordance with the requirements set forth in California Government Code Section 53069.4(b)(1)-(2) shall constitute a waiver of the right to contest the Hearing Officer's decision. (Ord. 2138a, §1, 12/3/1996; Ord. 2576, § 5, 6/27/2017; Ord. 2646, § 2, 7/28/2020)

* * *