

**CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulation: Issuance and Appeal of Citations

Sections Affected: 2630 and 2630.2 of Article 1 of Division 26 of Title 16 of the California Code of Regulations (CCR)¹

Background and Problem Statement

The Landscape Architects Technical Committee (LATC) licenses landscape architects, and there are approximately 3,740 licensed landscape architects in California. As a result of legislative reorganization, the LATC, established on January 1, 1998, replaced the former Board of Landscape Architects and was placed under the purview of the California Architects Board (Board). Business and Professions Code (BPC) section 5630 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry out the provisions under the Landscape Architects Practice Act (Act) (Chapter 3.5 of Division 3 of the BPC). BPC section 5526.5 of the Architects Practice Act (Chapter 3 of Division 3 of the BPC), as amended effective January 1, 2020, allows the respondent of a citation to request a formal administrative hearing after an informal conference if the citation is upheld or modified. BPC section 5526.5 also authorizes the executive officer to appoint a designee to hold an informal conference in the event of a conflict of interest. The Board issues an average of two citations per year on behalf of LATC. Currently, the Board's executive officer is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to BPC sections 125.9 or 148 against landscape architects or unlicensed persons who have committed any acts or omissions which are in violation of the Act or any regulation adopted pursuant thereto.

LATC's regulations do not currently provide for the Board's existing ability to issue a citation containing an order of correction to cease unlawful advertising under BPC section 149 nor do the regulations define that the 30-day deadlines are counted as calendar days. LATC'S regulations do not currently allow a respondent to request a formal administrative hearing within 30 days of the affirmation or modification of a citation following an informal conference nor allow the executive officer to appoint a designee to hold the informal conference in the event of a conflict of interest. Currently, LATC'S regulations do not address that another informal conference cannot be requested for a citation that has been affirmed or modified following an informal conference

¹ All CCR references are to title 16 unless otherwise noted.

To align with the Board's Architects Practice Act, the LATC proposes to amend CCR section 2630 to include the authorization for issuing a citation containing an order of correction to cease unlawful advertising under BPC section 149 and to clarify that the 30-day deadlines in CCR section 2630 are counted as calendar days. The LATC is also proposing to amend the language of CCR section 2630.2 to allow a respondent to request a formal administrative hearing within 30 days of the affirmation or modification of a citation following an informal conference and to allow the executive officer to appoint a designee to hold the informal conference in the event of a conflict of interest.

At LATC's December 2, 2020, meeting language was proposed to amend CCR section 2630.2 to clarify licensees' options upon being served with a citation. At that meeting LATC recommended that the Board to approve the proposed amendments. At the Board's December 11, 2020, meeting the Board adopted the language recommended by LATC and approved also amending CCR sections 2630 and including that section in the rulemaking. During the Legal Affairs Division's review of the proposed language, additional revisions were recommended to clarify the proposed language. At the Board's December 10, 2021, meeting the Board approved and adopted revised proposed language amending CCR sections 2630 and 2630.2. In discussing the changes, the headings below reference the existing regulatory language, and the explanation below the headings set out where existing language is being re-labeled or moved to in the proposed regulatory language.

Specific Purpose, Anticipated Benefit, and Rationale:

CCR Section 2630 – Issuance of Citations

Amend CCR Section 2630, subsection (a)

Purpose: CCR section 2630, subsection (a) is being amended to provide for the Board's existing ability to issue citations containing an order of correction to cease unlawful advertising under BPC section 149.

Anticipated Benefits/Rationale: The Board anticipates that the revisions to CCR section 2630, subsection (a) will make it easier for licensees and unlicensed individuals subject to the issuance of a citation to understand which BPC sections authorize the Board's executive officer to issue citations containing orders of abatement and/or administrative fines.

The Board has found that this section did not address the Board's existing ability to issue citations containing an order of correction to cease unlawful advertising under BPC section 149. If an unlicensed individual is advertising as providing landscape architectural services without a license to do so, then the Board's executive officer has the authority to issue citations containing orders of abatement and/or administrative fines. In the past, the Board has issued citations containing orders of abatement and/or administrative fines for violations pursuant to BPC section 149. This proposal is necessary to clarify for the public the Board's existing ability to issue citations containing an order of correction to cease unlawful advertising under BPC section 149.

Amend CCR Section 2630, subsection (b), paragraph (7)

Purpose: CCR section 2630, subsection (b)(7) is being amended to clarify that the 30-day deadline for the payment of an assessed fine for a licensee is counted as calendar days.

Anticipated Benefits/Rationale: The Board anticipates that amending CCR section 2630, subsection (b)(7), will provide clarity to respondents as to when payment of an assessed fine is due, unless the citation is being appealed, in order to avoid disciplinary action being taken by the Board.

This proposal is necessary to clarify the 30-day deadline for a licensee to pay a citation is counted as 30 calendar days.

Amend CCR Section 2630, subsection (b), paragraph (8)

Purpose: CCR section 2630, subsection (b)(8) is being amended to clarify that the 30-day deadline for the payment of an assessed fine for an unlicensed individual is counted as calendar days.

Anticipated Benefits/Rationale: The Board anticipates that amending CCR section 2630, subsection (b)(8), will provide clarity to respondents as to when payment of their assessed fine is due, unless the citation is being appealed, in order to avoid the executive officer applying to the appropriate superior court for a judgement in the amount of the fine.

This proposal is necessary to clarify the 30-day deadline for an unlicensed individual to pay a citation is counted as 30 calendar days.

Amend CCR Section 2630, subsection (b), paragraph (8), sub-paragraph (A)

Purpose: Existing CCR section 2630(b)(8)(A) is being re-labeled as subsection (c) for clarity as it is more appropriate as a separate subsection of CCR section 2630 rather than a subparagraph of CCR section 2630, subsection (b), paragraph (8).

Anticipated Benefits/Rationale: The Board anticipates that amending CCR section 2630(b)(8)(A) will provide clarity that the issuance of citations shall be separate from, and in addition to, any civil or criminal remedies, and that this is not only applicable to unlicensed individuals assessed with a fine but licensees as well.

This proposal is necessary to clarify that citations issued to both licensed and unlicensed individuals shall be separate from, and in addition to, any civil or criminal remedies.

CCR Section 2630.2 – Appeal of Citations

Amend existing CCR Section 2630.2, Title

Purpose: The purpose of amending the title of CCR section 2630.2 from the existing title of “Appeal of Citations” to “Contest of Citations, Informal Conference” is to provide a more descriptive title for the section, as the section is about a cited person contesting a citation through an informal conference.

Anticipated Benefits/Rationale: The Board anticipates that amending the title will better clarify the intent of CCR section 2630.2 and what the section defines.

This proposal is necessary to provide respondents and the public with a title that accurately describes the content of CCR section 2630.2.

Amend existing CCR Section 2630.2, subsection (a)

Purpose: The purpose of amending CCR section 2630.2 is to break it into subsection (a) and subsection (a) paragraph (1), to create the first item in a list of the options a person issued a citation may use to contest the citation, and to add clarifying language providing that any person issued a citation who submits a written request for a hearing to contest the citation is requesting an administrative hearing.

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from the reorganization in that it provides a list of options that may be used to contest a citation and clarifies that a person contesting the citation by requesting a hearing in writing is asking for an administrative hearing, not a court hearing.

The Board determined that it was necessary to provide a list of options a person issued a citation may use to contest the citation for ease of understanding and to clarify that persons issued a citation who submit a request in writing for a hearing are requesting an administrative hearing. This proposal is necessary for clarity and to establish that the written request for a hearing to contest a citation is a request for an administrative hearing, not a court hearing.

Amend existing CCR Section 2630.2, subsection (b)

Purpose: The purpose of amending CCR section 2630.2(b) is to relabel it as subsection (a), paragraph (2), to include it as second in the list of options a person issued a citation may use to contest a citation, and to add clarifying language providing that a request for a hearing is provided in subsection (a) paragraph (1).

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from the reorganization of providing a list of methods that may be used to contest a citation and the clarification that a request for an informal conference may be made in addition to the request for an administrative hearing as provided in subsection (a), paragraph (1).

The Board determined that it was necessary to provide a list of options a person issued a citation may use to contest the citation for ease of understanding and to clarify a request for an informal conference may be made in addition to the request for an administrative hearing as provided in subsection (a), paragraph (1).

Amend existing CCR Section 2630.2, subsection (c)

Purpose: The purpose of amending CCR section 2630.2, subsection (c) is to both relabel it as subsection (a), paragraph (3) so it is included as the third item in the list of options a person issued a citation may use to contest the citation and to add language providing that the Board's executive officer's designee may affirm or modify the citation at the informal conference, and that this does not waive the cited person's right to request for an administrative hearing to contest the citation.

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from the reorganization that provides a list of the options that may be used to contest a citation and from clarification that a designee may hold an informal conference in the executive officer's stead if the executive officer has a conflict of interest or other conflict. The Board is allowing the executive officer to assign a designee to hold an informal conference so that the outcome of the informal conference is fair and unbiased, and the informal conference can proceed in a timely manner.

The Board determined that it was necessary to provide a list of options a person issued a citation may use to contest the citation for ease of understanding and to include language to allow the executive officer to appoint a designee to hold an informal conference in the event of a conflict of interest or other conflict to maintain the integrity and timeliness of the informal conference. This proposal is necessary to provide persons requesting an informal conference to contest an issued citation with a timely, fair, and unbiased opportunity to present their case.

Amend existing CCR Section 2630.2, subsection (d)

Purpose: The purpose of amending CCR section 2630.2, subsection (d) is both to relabel it as subsection (b) based on the removal of existing subsections (b) and (c) to form a new three-part list of options under subsection (a), and to add in language clarifying that the Board's executive officer may designate someone to hold the informal conference in their stead, that the informal conference will be held within 60 calendar days (instead of 30 working days) of the Board receiving a written request for an informal conference, and that the executive officer or their designee may, for good cause, extend the time to hold the informal conference more than 60 calendar days from Board's receipt of a written request for an informal conference for good cause.

Language is also added to clarify that within 30 calendar days after service of an affirmed or modified citation following an informal conference, a cited person may make a new request in writing for an administrative hearing but is not allowed to submit a request for a second informal conference. If a timely request for an administrative hearing isn't made after the service of the affirmed or modified citation following informal conference, the decision of the informal conference will be considered the final order. Lastly, language is added to establish that an administrative hearing after an informal conference will be conducted as provided in paragraph (4) of subsection (b) of Section 125.9 of the Code.

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from relabeling the subsection to separate it out from the list above in (a) and make it easier to understand and such persons will benefit from the executive being able to assign a designee to hold an informal conference in the event a conflict of interest or other conflict so that the outcome of the informal conference is timely, fair, and unbiased. Additionally, it is anticipated that the Board and individuals issued a citation will benefit from the extended time in which an informal conference must be held because it allows for more opportunity to find a date that works for all parties involved and for any necessary travel arrangements to be made.

The Board determined that it was necessary to relabel the subsection for organizational purposes and to include language to clarify that the designee appointed by the executive officer may hold an informal conference in the event of a conflict of interest or other conflict and the designee is authorized to make decisions regarding the informal conference. Additionally, the Board determined that it was necessary to extend the length of time to hold an informal conference to 60 calendar days to better accommodate all parties involved in determining an appropriate date. This proposal is necessary to clarify that the executive officer, or their designee, is able to affirm, modify, or dismiss the citation based on the informal conference, and has 60 calendar days from receipt of the request to hold the informal conference.

Amend existing CCR Section 2630.2, subsection (e)

Purpose: The first sentence in existing CCR section 2630.2, subsection (e) is being relabeled as subsection (c), and the rest of the section after the sentence is being struck.

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from relabeling the subsection to make it easier to find and understand and removing the additional language in former subsection (e) will simplify the regulation, as the removed language is restated and revised and placed below in new CCR section 2630.2, subsection (d).

The Board determined that it was necessary to relabel the subsection for organizational purposes and to delete the latter half of the subsection and move it, revised and rewritten, into new subsection (d).

Add new CCR Section 2630.2, subsection (d)

Purpose: In this rulemaking existing CCR section 2630.2, subsection (d) is re-labeled as subsection (b) due existing subsections (b) and (c) having been moved up to create a three-part list under subsection (a). The interplay of the informal conference and an administrative hearing previously discussed in the last three sentences in existing subsection (e) is now discussed in new subsection (d) which provides that a cited person who had not previously requested an administrative hearing in writing may make, during the 30 days after service of an affirmed or modified citation following an informal conference, a written request to the executive officer for an administrative hearing. New subsection (d) provides that a cited person may not request a second

informal conference to contest a citation that has been affirmed or modified after an informal conference. New subsection (d) establishes that if a cited person doesn't make a timely request for an administrative hearing after the informal conference the affirmed or modified citation shall be considered a final order. New subsection (d) also establishes any administrative hearing after an informal conference will be conducted in accordance with BPC section 125.9(b)(4).

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from relabeling of the subsections to make this regulation section easier to follow and that such persons will benefit from information clarifying the interplay between the informal conference and an administrative hearing. It is anticipated that cited persons will benefit from being able to request an administrative hearing during the 30 calendar days after service of their citation and during the 30 calendar days after service of an affirmed or modified citation after an informal conference. It is anticipated persons issued a citation will benefit from the clarification that once an informal conference has been conducted another informal conference cannot be requested to contest an affirmed or modified citation, and that an administrative hearing must be requested in a timely manner after service of the affirmed or modified citation otherwise the decision becomes a final order. Lastly, it is anticipated that persons issued a citation will benefit from knowing how the administrative hearing will be conducted and the BPC section which provides that information.

The Board added new subsection (d) for clarity and organizational purposes. Former subsection (e) was spit into two separate subsections covering the informal conference and its results and the interplay between the informal conference and an administrative hearing. The Board chose to provide cited people with every opportunity to contest their citation, and thus new subsection (d) establishes that a cited person is given a second opportunity to request an administrative hearing after service of an affirmed or modified citation following an informal conference. The Board found it necessary to clarify that, since cited people were being given a second opportunity to request an administrative hearing, the Board would not allow a cited person to request a second informal conference after the conclusion of a first informal conference. The Board found it necessary to establish in regulation that a cited person must submit a request for an administrative hearing after service of the affirmed or modified citation in a timely manner or the affirmed or modified citation will be considered a final order. Lastly, the Board determined that it was necessary for clarity and transparency to include language establishing how the administrative hearing will be conducted and pointing to BPC section 125.9(b)(4) which states such hearings are held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

This proposal is necessary to: provide a cited person every opportunity to contest the issued citation by allowing them to request an administrative hearing after service of an affirmed or modified citation from an informal conference; clarify that a cited person may not request another informal conference to contest an affirmed or modified citation following an informal conference; and clarify that if the cited person does not timely

request an administrative hearing after service of the affirmed or modified citation, the decision of the affirmed or modified citation will be considered a final order; and provide transparency on how an administrative hearing will be conducted and where information on administrative hearings can be found in the Business and Professions Code.

Amend existing CCR Section 2630.2, subsection (f)

Purpose: Existing CCR section 2630.2, subsection (f) is amended to be re-labeled as subsection (e) and to clarify that the hearing a cited person may request is an administrative hearing.

Anticipated Benefits/Rationale: The Board anticipates that persons issued a citation will benefit from the clarity that the hearing is specifically an administrative hearing.

The Board determined that it was necessary to include language to clarify that the hearing that a cited person may request pursuant to BPC section 125.9(b)(4) is an administrative hearing. This proposal is necessary to provide clarity on the type of hearing that a cited person may request.

Amend existing CCR Section 2630.2, subsection (g)

Purpose: Existing CCR section 2630.2, subsection (g) is amended to be re-labeled as subsection (f), to clarify that the hearing a cited person may request is an administrative hearing and to revise the citations in this subsection to reflect the re-labeling changes proposed in this rulemaking.

Anticipated Benefits/Rationale: The Board anticipates that people issued a citation will benefit from clarification that the hearing is specifically an administrative hearing, and from having correct citations to other subsections in the proposed rulemaking.

The Board determined that it was necessary to clarify that a requested hearing to challenge a citation is an administrative hearing and to correct the citations in this section to the subsections where a request for an administrative hearing can be made. This proposal is necessary to provide clarity on the type of hearing being requested and which subsections provide for the request of an administrative hearing.

Amend existing CCR Section 2630.2, subsection (h)

Purpose: Existing CCR section 2630.2, subsection (h) is amended to be re-labeled as subsection (g), to clarify that the hearing requested is an administrative hearing, and to revise the citations within this subsection for consistency to reflect the re-labeling changes proposed in this rulemaking.

Anticipated Benefits/Rationale: The Board anticipates that people issued a citation will benefit from the clarification that the hearing is specifically an administrative hearing, and from having correct citations to other subsections in the proposed rulemaking.

The Board determined that it was necessary to clarify that a requested hearing to challenge a citation is an administrative hearing and to correct the citations in this

section to the subsections where a request for an administrative hearing can be made. This proposal is necessary to provide clarity on the type of hearing being requested and which subsections provide for the request of an administrative hearing.

Underlying Data

1. December 2, 2020, LATC Meeting Agenda; Meeting Materials; and Meeting Minutes
2. December 11, 2020, Board Meeting Agenda; Meeting Materials; and Meeting Minutes
3. December 10, 2021, Board Meeting Agenda; Meeting Materials; and Meeting Minutes

Economic Impact – Overview

While licensing the approximately 3,740 licensed landscape architects in California, the Board issues an average of one citation per fiscal year for violations of the Landscape Architects Practice Act. This proposal clarifies the Board's existing ability to issue orders of corrections to cease unlawful advertising under BPC section 149 clarifies that the 30-day deadlines are counted as calendar days, amends and clarifies the ability for a respondent to contest a citation that has been issued to them and allows the executive officer to appoint a designee to hold an informal conference in the event of a conflict of interest or other conflict.

The Board does not know the number of persons who would be subject to a citation. The Board does not register landscape architecture businesses, thus the Board cannot estimate the number of businesses that may be impacted, or how many of the potentially impacted businesses are small businesses. The Board does not anticipate the creation or elimination of businesses from this rulemaking.

The proposal seeks to clarify the issuance of citations and the process in which a cited person may take to contest an issued citation. The Board anticipates that the proposal will improve the citation process for those individuals issued with a citation but cannot speculate as to whether this proposal will eventually have an impact on landscape architect businesses.

Benefits

The Board anticipates that the minor and technical revisions and the clarification of the issuance of citations and the process in which a cited person may contest a citation will improve the experience of individuals subject to a citation. By improving this part of the enforcement process, the Board anticipates that this proposal may benefit the health, safety, and welfare of Californians by improving the individual experiences of the individuals subject to a citation and allowing them a timely, fair, and unbiased process for contesting a citation.

The Board does not anticipate this proposal will have an impact on worker safety or improve the state's environment. While difficult to quantify, this proposal improves the quality of life for Californians by improving the experience of individuals subject to a Board citation.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it affects individuals who have violated the Act and are subject to a citation.
- It will not create new business or eliminate existing businesses within the State of California because it only affects individuals who have violated the Act and are subject to a citation.
- It will not affect the expansion of businesses currently doing business within the State of California because it only applies to individuals who have violated the Act and are subject to a citation.
- This regulatory proposal may benefit the public health, safety, and welfare by ensuring that individuals who have violated the Act and are subject to a citation are provided with the process for the issuance and contesting of a citation.
- It will not benefit worker safety because it only affects individuals who have violated the Act and are subject to a citation.
- It will not benefit the state's environment because it affects individuals who have violated the Act and are subject to a citation.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

The Board considered keeping the status quo; however, this alternative was rejected because the revisions made to the issuance of citations and the appeal of citations will clarify to cited persons the process for issuing citations and the process in which a citation can be contested.