



STAFF REPORT

Discussion and Direction of Code Enforcement in the City of Belmont

Honorable Mayor and Council Members:

Summary

On November 13, 2001, the City Council approved resolution #9113 (Exhibit 1), which established policies for code enforcement in the City of Belmont. Based on two years' experience, we are returning the code enforcement policy to City Council for its review and comment. Staff seeks any changes or other Council comments on code enforcement activities in Belmont.

Background

Code Enforcement has long been an important issue amongst the residents and businesses of Belmont. An effective Code Enforcement Program will enhance the City's livability to its residents and creates an attractive business environment. In events that could be considered critical health and safety violations the City will respond when the violation is viewed by or reported to City staff. In addition, code enforcement has developed several on-going yearly programs to enhance the livability of Belmont. Finally, the City is primarily re-active to general welfare issues not critical to overall health and safety. Staff is approaching Council at this time to discuss these policies and provide an opportunity for the Council to consider if any policy changes are warranted regarding code enforcement responses.

On November 13, 2001, the City Council approved resolution #9113, which established policies for code enforcement in the City of Belmont. Included in these policies are:

- The City will enforce its ordinances based on the violation, not the violator. The focus of our code enforcement is the nuisance activity or structure, without regard to the source of the complaint or the nature or character of the violator.
- The City will enforce confirmed violations based on the idea that they are violations against the City, not against a neighbor or other individual party.
- The City seeks compliance first and foremost. Enforcement efforts are directed at providing opportunities for solving problems and eliminating violations, not punishing people.

- When sufficient opportunity for eliminating the nuisance has been provided, but no significant results obtained, the City will aggressively pursue relief in the courts, including civil and criminal remedies.
- Health and safety violations are given highest priority so that human life and property are protected without delay.

Based on these principles, the Council approved a 3-tiered priority list for code enforcement activity.

- Level One, Health & Safety – Pro-Active Enforcement (No complaint needed for staff response)
- Level Two, Scheduled/On-going Enforcement (Programmed or scheduled enforcement)
- Level Three, General Welfare (Complaint only response)

Discussion

Enforcement Procedures

When a complaint is received, staff first response is to verify the validity of the complaint. Depending on the type of violation, staff either contacts the responsible party in person or sends a notice of violation to the responsible party. The notice of violation contains a time frame to correct the violation. A follow-up investigation is conducted in the appropriate time frame to determine if the violation is corrected. In 2003 there were 228 documented code enforcement cases. Of these, 204 (90% of the documented violations) were corrected with one notice being sent to the responsible party.

If the violation is not corrected with the first notice, then a second notice of violation is mailed with language that states more serious consequences if the violation is not corrected within the pre-determined time frame. In 2003, eleven cases or 4% were corrected after being notified with a second letter.

If the violation is not corrected in the pre-determined time frame of the second notice, the City reserves the right to either send a third notice or refer the matter to the City Attorney who will take the necessary steps to bring the property into compliance by using the court system. The third notice is only used if the responsible person has begun the correction process but has not completed the process to the satisfaction of staff. Thirteen or 6% of the cases in 2003 were referred to the City Attorney for further abatement proceedings.

A majority of the cases will receive 15 days with the first notice to correct the violations. The second notice will either receive 10 to 15 days determined by the severity of the violation.

On matters that present a serious hazard to the community, the City will only allow up to three (3) days to correct the violation. The cases can be referred to the City Attorney any time after this three-day period in order to have the matter resolved as soon as possible.

Enforcement Activity

Between January 1, 2003 and November 30, 2003, there were 228 documented code enforcement cases in Belmont. These figures are similar to the figures from the calendar year 2002 which was the first year utilizing a “re-active” code enforcement process.

The types of situations that code enforcement handled in 2003 are:

- Overgrown vegetation (75 cases, includes vegetation fire season removal)
- Illegal construction (31 cases)
- Storing debris and rubbish in public view (29 cases)
- Storing inoperable/unregistered vehicles in public view (26 cases)
- Unsafe buildings/living units, pack rats (11 cases)
- Parking on unpaved/unapproved surfaces (11 cases)
- Discarded appliances, household items, construction material (11 cases)
- Misc. complaints-includes illegal tree removal, unsafe pools, basketball hoops in public R.O.W, etc (9 cases)
- Operating without a business license/illegal businesses (8 cases)
- Storing garbage/recycle bins in public view (7 cases)
- Illegal fences (6 cases)
- No garbage service (6 cases)
- Illegal signs (5 cases)
- Illegal keeping of animals (4 cases)

This figure does not include situations where City staff contacted the responsible party in person and had the matter resolved with education and an informal conversation. It is also important to remember that other City departments respond to complaints that result in enforcement actions, including sewer and erosion problems (Public Works) and abandoned vehicles in streets and alleys (Police). Therefore, the numbers above represent only a portion of all enforcement activity in the City.

In addition, code enforcement has also been assigned to oversee the Construction and Demolition Recycling Program. This program has resulted in Belmont being one of the few cities in San Mateo County to achieve the State mandated goal of reducing construction waste in our landfills by 50% each year since 2000.

In addition, Code Enforcement coordinates with South County Fire to reduce the threat of wild fires in the open space areas. This program operates during the fire season by working with property owners to remove hazardous vegetation and establish “firebreaks” and defensible areas along their property and open space land. Forty-nine properties were identified as having potentially hazardous fire conditions in 2003.

Code Enforcement also works with various San Mateo County agencies to monitor possible illegal and unsafe activities in Belmont. These activities include inspections of massage parlors, tattoo parlors, automotive repair shops and various animal control issues.

As can be seen, there are many types of situations that fall under the realm of code enforcement, and the list grows each year. Code enforcement also functions as a “clearing

house” for new situations or questions regarding conditions or activities which may not be a violation but generate a call to City Hall and require staff time to guide citizens to the proper agency to assist them.

To conduct code enforcement under the current guidelines, one full-time employee and approximately 15% of an administrative / clerical employee are dedicated to these activities (excluding Public Works and Police).

Neighborhood Outreach

On January 29, 2004, City staff met with Belmont’s Neighborhood Associations in an informal discussion of the City’s policies of Code Enforcement. Staff explained the procedures and legal requirements for the process to abate violations. Graphs and maps (Exhibit 2 and 3) were included to show the activity levels of Code Enforcement in 2003, the process for resolving violations, the areas of Belmont where violations are occurring and types of violations that Code Enforcement handled in 2003. Staff also distributed and explained the “Priority List” that was established by Council in November 2001.

Several concerns were raised by the neighborhood representatives, including objections to the City’s requirement that complaints be provided in writing (see attached meeting minutes, Exhibit 4). In other words, the City would accept verbal complaints where the reporting party is willing to leave their information. The group agreed that it would make it friendlier for citizens to report violations.

In addition, staff surveyed the representatives and asked each one to review and reprioritize the “Priority List” as if he or she were a Council Member. (Exhibit 5). With eight responses, there were various replies with no one item standing out as needing to be changed according to the survey. The following are the most frequently mentioned changes:

- Downgrade Excessive Animals from Level One to Level Three Enforcement. (Four responses)
- Upgrade Fire protection/weed abatement from Level Two to Level One Enforcement. (Four responses)
- Upgrade Abandoned/Unregistered vehicles from Level Three to Level One or Level Two Enforcement. (Three responses)
- Upgrade Trash/Debris on property from Level Three to Level One Enforcement. (Two responses)

Options for Revising the Code Enforcement Policy

From staff’s experience over the past two years, and from the discussion and feedback from the neighborhood meeting, staff has identified four options for modifying our current code enforcement policy. Any change requires a consideration of what approach will best meet the needs of the citizens of Belmont while least impacting the General Fund of the City.

1. *Make no changes to the current program. All responses will require a written complaint with the exception of health and safety related matters that will be acted upon immediately*

This process has raised concerns that the City does not accept anonymous complaints to report violations. It has been said that this type of process does not create a friendly environment for citizens that want to report violations. One attendee at the Neighborhood Association meeting stated that it appears “the City is installing another roadblock to City Hall”.

The primary reasons for not accepting anonymous complaints is the need to contact the reporting party to gather further information, to clarify information or (in the event that the City must pursue the matter in the court system) to achieve compliance. In the event that the City must take the violator to court, the City must show that due process was applied. To help with the due process and show that the City is not on a “vigilante” hunt, a verifiable complaint shows the Courts that the City is responding to its citizens and that the violation is against the reasonable person’s view of a safe and clean neighborhood.

This type of enforcement has also removed a majority of false retaliation complaints between neighbors and has saved staff time by not having to pursue these false reports of violations.

Written complaints also protect the City from possible Fourth Amendment violations. Citizens have the right to be protected from illegal search and seizure. When a written complaint is received regarding possible illegal activities (illegal construction, illegal business, etc), the written complaint will show the courts that the City is responding to a specific complaint and not pursuing individual property owners without cause.

2. *Make the suggested changes to the Priority List according to surveys from the Neighborhood Association meeting. Proceed with the current three-tiered approach (pro-active enforcement for life safety issues, on-going enforcement for scheduled programs and written complaint response only for general welfare violations).*

As noted above, the Neighborhood Association representatives made several suggestions, with the following appearing most frequently:

- Downgrade Excessive Animals from Level One to Level Three Enforcement.
- Upgrade Fire protection/weed abatement from Level Two to Level One Enforcement.
- Upgrade Abandoned/Unregistered vehicles from Level Three to Level One or Level Two Enforcement.
- Upgrade Trash/Debris on property from Level Three to Level One Enforcement.

Staff has several concerns regarding these changes. Downgrading excessive animals from the Level One Enforcement to Level Three could result in dangers to health and safety. Most of the current animal calls concern the keeping of too many animals or the improper care of animals. Situations like these could have an adverse effect on the surrounding neighborhood concerning noise, smells, waste, disease, animals running loose and increase rodent activity.

Currently when a situation regarding animals is brought to the attention of the City, either by anonymous or written complaint, immediate action is taken to evaluate the severity of the situation due to the possible health and safety concerns. If placed in Level Three Enforcement category, the response would require a written complaint, which could delay the proper action by the City.

Second, the City currently takes up fire protection/weed abatement in the open space areas on a seasonal basis (spring and late summer). Staff feels that continuing the program on a bi-annual basis as it is currently performed is sufficient in its enforcement. Individual single-family properties in the neighborhoods should remain as a complaint only response and pursued year round.

Third, trash, debris and the keeping of un-registered and non-operational vehicles are currently listed under Level Three Enforcement. These violations concern the general welfare of the community. Most of these violations are property owners' unknowingly storing items in the public view on a temporary basis that is in violation of the Belmont Ordinance. Most cases are property owners storing an extra vehicle that they want to restore, just cleaned out their garage and are waiting for BFI to do their bi-annual cleaning pick-up or waiting for a friend to come by with a pickup truck to remove the debris. Only 12 of the 55 cases of debris storage and inoperable vehicles required more than one notice from the City to abate the problem. Most owners were embarrassed that they were asked to clean their property and were very responsive when the matter was brought to their attention.

There may be other revisions to the priorities the Council may wish to consider. Any revision will require a review to determine; a) if other revisions are also needed to avoid impacting the budget, or b) what additional resources may be necessary.

3. *Establish more enforcement programs ("sweeps"). Patrol the business districts (pro-active enforcement) taking action on particular violations after conducting an outreach campaign.*

Taking a pro-active approach in certain areas and for certain problems – signs in the commercial district, for example – could be a very beneficial approach to achieving a balanced code enforcement program in the City. In commercial districts where it is important to attract customers, a pro-active approach would allow the City to establish and maintain a clean and attractive environment to benefit all types of businesses. A pro-active approach would allow the City to take action on any violation that is observed to preserve the integrity of the area. *

This option indicates that additional code enforcement programs could be developed to address specific problems or areas. Such programs could address signs, outdoor

* By contrast, taking a re-active approach in the neighborhoods would allow residents to control how their neighborhood looks. If the situation does not offend them and they are comfortable with the appearance of their neighbors' property, then the City should not expend resources in that area. The residents will still be able to report their concerns and receive a prompt response from the City while still maintaining the integrity of the neighborhood. If the Council agrees with this position, more aggressive code enforcement activities should be targeted on commercial areas first.

storage, illegal disposal, building and site maintenance or other problems. (There is also the potential for conducting programmatic enforcement in residential areas.) At this time, staff believes that a pilot program on a single issue could be implemented within current funding levels. However, it may be necessary to increase the code enforcement budget and possibly hire additional officers to assist with the increased workload of a more complex or comprehensive program.

4. *The fourth option is to have code enforcement pro-actively patrol the City and take immediate action on any violations that are observed in all districts of the City without a complaint being filed.*

As this may sound as the most appealing of all the options presented, it also has the most potential for complaints. City staff would actively patrol and take action against any violation that is observed throughout the City. This would remove the need of having written complaints being filed for staff to action against violations.

Having City staff take action on any violation observed could create an overly aggressive image for the City and could create ill feelings towards the City from the residents. There could also be a cause of concern that the City is violating citizens 4th Amendment rights protecting them from illegal searches in their residences. If there is a report of illegal construction inside a residence that is not visible from the right of way, the City must send notice requesting a site inspection. If the resident denies the request for inspection, the City must request an inspection warrant from the Courts. In order to receive the inspection warrant the City must show due process has been attempted and why we believe that there is illegal activity in the property. The Courts will make every effort to protect the “little guy from the big city”. Without a written complaint from a citizen, the code enforcement officer is left to determine priorities of enforcement and the severity of each violation.

This option would result in a significant increase in the workload of the current code enforcement staff. With the current job duties assigned to code enforcement, it will be necessary to increase the code enforcement budget and hire additional officers to assist with the increased workload.

Fiscal Impact

If Council decides to make no changes to the response procedures (Options 1) or conduct a pilot enforcement program (Option 3) there will no fiscal impact. However, if Council decides to accept Options 2 or 4 (or an expanded Option 3) without adjusting other enforcement priorities, it may be necessary to add additional staff to provide the new levels of enforcement. Based on Council direction, staff would return with a more detailed fiscal impact analysis.

Recommendations

Staff recommends Options 1 and 3:

- Make no changes to the current enforcement priorities and procedures. All responses

will require a written complaint (re-active enforcement) with the exception of health and safety related matters that are observed by staff that will be acted upon immediately.

- Establish a single-issue pilot program in the commercial districts. Staff suggest that the issue could be either signs, or vehicles, or building maintenance, or site / landscape maintenance. The program would include an outreach component to all owners in the commercial districts. Current staffing levels should allow the creation of such program; however, any further programs or enhancements to the code enforcement program may require additional resources to complete the require tasks.

Respectfully submitted,

Kirk Buckman
Code Enforcement
Officer

Craig Ewing
Planning and Community
Development Director

Jere Kersnar
City Manager

Attachments

1. City Council Resolution 9113
2. Code Enforcement Activity 2003
3. Geographical Distribution of 2003 Code Enforcement Cases
4. Minutes of Neighborhood Association Representatives Meeting, 1/29/04
5. Priorities Worksheet