



## **STAFF REPORT**

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### **Discussion and Direction on Establishing a Citation Process for Code Enforcement**

#### **Honorable Mayor and Council Members**

#### **Summary**

On October 26, 2004, the Council asked for information on ways to improve the City's code enforcement efforts, with a focus on achieving faster compliance. In addition, the Council adopted a budget correction strategy for Fiscal Year 2005 that included \$25,000 in revenues derived from code enforcement activities. Staff has taken a preliminary look at these issues and offers this report for review and discussion. We are seeking the Council's direction on the specific program changes to be implemented. Since some of these changes will involve a significant commitment of staff time, it may be appropriate to place the project among the items to be considered during the next Priority Calendar review.

#### **Background**

Over the past several years, the City has sought to clarify its enforcement policy, with its most deliberate effort occurring in November 2001. At that time, the Council adopted Resolution No. 9113 establishing its first formal policy for code enforcement (attached). That resolution set forth an approach based on the following principals: Seeking compliance rather than imposing punishment, focusing on the violation rather than the violator or complainant, providing flexibility for special needs (old age or infirmity) and giving health and safety problems the highest priority.

More recently, there have been expressions by the residents and Council that these principals may no longer exactly reflect the community's desires for assuring code compliance. First, seeking compliance and providing opportunities for solving problems and eliminating violations has been shown to take significant time on certain high-profile enforcement cases, leading to neighbor frustration and City expense. Second, the enforcement process ultimately leads to the courts, which has shown to be a less-than-sympathetic forum for the City's enforcement concerns. Finally, the current approach yields no revenue to offset the expenses associated with code enforcement (roughly \$100,000 per year). The Council has asked staff to provide alternative enforcement options to address these concerns.

## Discussion

Based on Council comments as well as commentary from recent Neighborhood Association Presidents meetings, staff believes that four factors can be addressed in modifying our current approach to code enforcement:

- *Faster Compliance* – What does it take to shorten the time between the receipt of a complaint and compliance?
- *City Control of Process* – How can the City retain control over the final disposition of a code enforcement case, instead of giving it over to the courts?
- *Break Even on Costs* – What can the City do to recover the costs of enforcing its Municipal and Zoning Codes?
- *Raise Revenues* – Does code enforcement have the potential to be a revenue-generating activity? How would this be done?

Staff contacted other cities in San Mateo County for their approach to some of these issues, which are presented below. Upon review of these items, the Council is requested to give direction to staff on its preferred course of action.

Faster Compliance – One of the more common criticisms the City receives about its code enforcement effort is that it is too slow. People often expect that successful abatement will occur soon after a complaint is filed.<sup>1</sup> However, with a non-cooperative violator, our current procedure involves at least two letters of notification from the City – each of which allows anywhere from 3 to 15 days to resolve the problem – and a third letter from the City Attorney seeking abatement. If no compliance is obtained, then is the case filed in court. A quick solution is rare in court, as it is the court's practice in San Mateo County to forward code enforcement cases to arbitration.

The City could significantly speed up the abatement schedule by sending one letter with a short time limit and filing in court upon failure to comply. Such an approach can be focused on selected types of problems, such as commercial businesses (as opposed to residences) or discarded equipment and materials (as opposed to overgrown vegetation). Staff believes that a faster abatement regimen would cause many cases to be resolved sooner since most violators will not want to face legal action. However, it might take several cases before the word gets out to the general public about the City's more aggressive posture.

Pros –

- *Faster Compliance Rate* – Violators soon realize that there is no grace period with the City and there is little benefit to delaying compliance.
- *Lower Overall Staff Costs* – One letter of notification and one follow-up investigation for all cases eliminates cases where two or three letters / site visits are required (before forwarding to the City Attorney).

Cons –

- *Heavy-Handed* – There is no second chance to work with City staff before facing a court filing.
- *Over-Simplified* – A policy of one letter / one deadline may not reflect the circumstances

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<sup>1</sup> One of the City's adopted Performance Measures shows that 73 % of all code enforcement cases are resolved in 60 days or less.

of many violations. (Some code enforcement cases are involved or yield partial compliance at the end of the first deadline. The property owner may be out-of-town, elderly or disabled; the violation may require several different actions that are not all completed on time.)

- *Staff Discretion* – If there is leeway beyond a policy of “you fail – we file”, staff exercises discretion over who gets a break. (What guidelines are we to use?)
- *Delays in Court* – Court delays still occur. (The City does not control the speed in which action may be taken, and the courts in San Mateo County usually refer code enforcement cases to arbitration, which can drag out for weeks or months.)

City Control of Enforcement Process – At present, all code enforcement cases are forwarded to the City Attorney for prosecution in the San Mateo County Court system. The City effectively cedes control of the process, and we have had mixed success achieving compliance once cases go to court. First, the courts invariably forward code enforcement cases to arbitration, where the result is often compromise rather than full compliance. Even when we get to trial and the City’s case is airtight, we find that local judges are not sympathetic to the city’s concerns compared with those of the property owner.

The City could establish local control over the enforcement process by implementing prescribed fines and penalties by municipal ordinance and establishing an administrative hearing process or similar system to review and judge unresolved violations. An administrative hearing officer or appointed hearing commission, with appropriate controls, could be set up by ordinance. Several cities in the Bay Area have some kind of local administrative hearing procedure, including Daly City, East Palo Alto, Hillsborough, San Mateo, South San Francisco and Woodside in San Mateo County. San Bruno is just starting its program and Pacifica is considering it.

Pros –

- *Faster Compliance* – The City expedites hearings before the hearing authority. Delays from court-ordered arbitration are eliminated.
- *Values-Based Decisions* – Decisions of a local hearing officer or commission more closely reflect the community’s values than the courts.

Cons –

- *Administrative Burden* – The City provides a hearing officer or commission, as well as administrative support, such as agendas, minutes and a venue.
- *Local Prejudices* – Some decisions may be prejudiced by personal knowledge rather than based on an even application of the law. (In a community the size of Belmont, a citizen-based hearing body will probably have personal knowledge of some of the defendants.)

Break Even on Costs – Presently, the City receives no compensation or revenue from its code enforcement program. Under the current system, only the court imposes fines or penalties, and nothing is forwarded to the City.<sup>2</sup> The city’s current code enforcement program consists of one full-time officer and support staff and services, representing an annual expenditure of about \$100,000. Presently, funding is provided primarily by the Development Services Fund, with

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<sup>2</sup> Recently, staff has been more aggressive in seeking attorneys fees and costs in court when the City prevails in a request for injunctive relief.

support from the Redevelopment General Fund (25%) and Housing Fund (5%). Since our Development Services Fund is required by Council policy to 'break even', code enforcement creates a structural deficit in this fund.

By creating an administrative hearing process (see above), the City could recapture its costs. A schedule of fines, penalties and fees based on the violation, staff and hearing expenses could be established. Revenues would be collected from payments on citations and fees charged on administrative hearings. Alternatively, liens could be recorded on the subject property with the County Recorder. Another revenue-generating option is a surcharge on all building permits to more directly recover the approximately 25% of time the code enforcement officer spends on active construction projects. This is part of the Council-adopted Budget Correction Strategy and will be presented to Council at the mid-year budget review.

Pros –

- *Reduced Impact on Development Services and Other Funds* – The City defrays some of the costs of code enforcement now borne by the Development Services Fund, RDA General Fund and Housing Fund
- *New Tool for Compliance* – The citation provides a new tool for the City to use to encourage compliance with violations short of proceeding with a civil action in court.

Cons

- *Mismatch Between Violation and Enforcement Costs* – The full cost of processing a code enforcement case is high compared to the nature of some violations (e.g., leaving trash cans out after hours, weedy lawn)
- *Loss of Fines Through Appeals* – Depending on the number of appeals and the willingness of the Council to grant relief, actual revenues may be less than expected
- *Increased Building Permit Fees* – A surcharge raises building permits fees for all contractors and home remodelers because of the actions of a few violators.
- *Administrative Burden* – The City must develop a citation management system to create, record, monitor and update the actions associated with the citation.

Generate Revenue – Beyond simply recovering costs, the City may generate added revenue through fines that exceed the cost of enforcement. In such a case the fines would be intended to do more than recover costs, but to punish violators with significant penalties.

Pros –

- *Revenue Source for City* – Significant penalties benefit the Development Services Fund and relieve pressure on the General Fund.
- *High Penalties Reduce Violations* – As the word spreads about the penalties, the City sees an improvement in the overall condition of the community.

Cons –

- *City as Bounty Hunter* – The City may be tempted (or accused of being tempted) to undertake even more aggressive code enforcement efforts as a way to increase revenues.

As can be seen, there are potential positive and negative consequences to any of these actions. However, should the Council implement changes, the likelihood of some of these consequences is not clear. Certainly, program design can have a significant impact: For example, we can learn from programs in other cities to minimize the administrative burden and improve fairness.

Staff is seeking the Council's assessment of the pros and cons listed in this report, and other consequences the Council may identify, as well as your overall priorities for process improvements. You may wish to consider the following:

1. If we are to send only one letter, what extenuating circumstances, if any, should be taken into consideration by staff for allowing a second letter?
2. If the City takes over the hearing process, is there a preference for the type of hearing authority: an independent officer, a staff committee, a citizen body, the Planning Commission, the Council?
3. What purpose should fines serve in the local hearing process: To recover costs, as a significant penalty, as a revenue generator?

Based on your direction, staff will prepare a work plan and estimate the hours of staff time needed. If they exceed twenty, the project will be included on the next Priority Calendar.

**Public Contact**

No public contact beyond posting of the agenda was initiated by the City in preparation for Preliminary Design Review.

**Financial Impact**

Additional expenses would result from the adoption of a City-run administrative process; however, a matching fee schedule could defray these costs. Also, savings may accrue through the adoption of expedited noticing procedures. If the council directs the adoption of higher fees or the building permit surcharge, increased revenues will occur. A building permit surcharge would be included in the mid-year budget adjustments.

**Recommendation:**

Staff has presented a variety of options for consideration by the Council on revising the code enforcement process. We seek the Council's direction on these matters and will return with appropriate resolutions and Priority Calendar program descriptions, as appropriate. The Council may also wish to provide direction on Planning Commission and Neighborhood Association input to developing and refining these programs. (The building permit surcharge will be presented during the mid-year budget review.)

**Attachment:**

1. Council Resolution 9608 (November 9, 2004)

Respectfully submitted,

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Craig A. Ewing  
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