

JOINT REPORT



FROM CITY ATTORNEY
AND CITY MANAGER

CMR: 355-05

TO: HONORABLE CITY COUNCIL

ATTN: POLICY & SERVICES COMMITTEE

FROM: City Attorney
City Manager

DATE: August 7, 2005

SUBJECT: RECOMMENDATION TO CONFIRM CITY CODE ENFORCEMENT
AND CITY ATTORNEY'S OFFICE CODE ENFORCEMENT
STRATEGY

Staff recommends that the Policy and Services Committee recommend to the Council that it confirm the City Manager's staff approach the prioritization of staff resources devoted to code enforcement; and the City Attorney's strategy for addressing violations of the City's Municipal Code. This report also responds to the City Auditor's recommendations regarding the City Attorney's role in the code enforcement process.

BACKGROUND

Code enforcement helps promote maintenance of neighborhoods and assists in effective enforcement of the City's land use regulations. Code enforcement is a cooperative effort that encompasses enforcement efforts by the Planning Department (including the Code Enforcement Division and Building Inspection), the Police Department, the Public Works Department (including the Environmental Compliance, Engineering, and Operations Divisions), the Police Department, and the Fire Department. The City Attorney's Office provides overall assistance to the City's Code Enforcement efforts.

Planning Department

The mission of the Code Enforcement Division of the Planning Department is to promote and maintain a safe and desirable living and working environment through enforcement of zoning requirements and various municipal code sections relating to property maintenance, land use, dangerous buildings, vehicle abatement, protected trees, and signs and fences.

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The code enforcement process in this division is initiated in response to complaints by individuals, based on staff observations made in the course of completing other duties, or stemming from actions such applications for building permits or zoning variances. Staff responds to code enforcement complaints according to the impact of the violation on the community, giving priority to situations that pose a serious risk to health and safety.

In most cases, the individual responsible for the code violation is given the opportunity to voluntarily correct the problem without a penalty. Individuals who fail to comply may be subject to fines and penalties, and the City Attorney's office may become involved.

Police Department

The Police Department enforces the City's parking ordinances and has one code enforcement officer who is responsible for permits and enforcement of taxicab regulation, the massage ordinance, solicitor permits, helicopter landings, alarms, pushcart vendors, and a variety of other Municipal Code sections on more obscure topics.

Public Works Department

The Engineering, Environmental Compliance, and Operations Divisions of the Public Works Department have code enforcement responsibilities for various issues related to the functions of those departments.

The Engineering Division is responsible for reviewing, permitting, and inspecting private work performed in the City's right-of-way, and code enforcement of the right-of-way involves items or infrastructure placed or works performed in the right-of-way without an encroachment or street work permit. The Division typically issues a verbal warning on discovery of these types of violations, and will follow up with administrative citations and associated fines when verbal warnings fail to result in compliance.

The Environmental Compliance Division monitors, investigates, and enforces Federal, State, and local requirements for water quality. The Division's primary responsibility is control over discharges of non-hazardous materials discharges into the streets, gutters, storm drains, and sewer system, and it supports the Fire Department in monitoring, investigation, and enforcement action for hazardous materials incidents.

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Code enforcement responsibilities in the Operations Division involve solid waste removal and disposal issues including container maintenance and placement, burning, dumping, and accumulation of trash

Fire Department

The Fire Department enforces Titles 15 and 17 of the Municipal Code relating to fire safety, hazardous materials, toxic gases and underground storage tanks, and portions of Titles 8 and 9 relating to weeds as a fire hazard and public nuisance. The department is also responsible for the enforcement of state and federal laws pertaining to fire safety, hazardous materials and underground tanks.

DISCUSSION

The City's overall philosophy on code enforcement is one designed to achieve compliance. The goal is to work with the property owner or tenant to achieve a positive result. The approach is one that is tailored to the distinct requirements of the City of Palo Alto. The intent is to treat all people that we interact with, with respect and in a dignified manner. Formal enforcement is discouraged, unless absolutely necessary. Criminal and civil enforcement are available but will only be used as last resort options.

The City Manager's staff and the City Attorney's office jointly administer a code enforcement system that is primarily driven by complaints of residents. Many of the City's code enforcement cases currently stem from complaints of residents who call the City's code enforcement division to report concerns about conditions in City neighborhoods. Although the City's code enforcement personnel also investigate complaints and violations they observe during the course of their duties, a code enforcement system driven by complaints allows the City to focus on resolving issues that trouble residents, and creates the most efficient balance between the City's resources and resident concerns.

In many cases, problems are resolved when code enforcement officers inform violators of a complaint so that a large portion of the compliance is voluntary. From a resource prioritization perspective, it is most efficient to focus limited staff resources on individuals who repeatedly violate code requirements or refuse to comply with direction from code enforcement staff. For these individuals, the administrative enforcement process is the most effective formal remedy.

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Title 1, Chapters 1.12 and 1.16, of the Palo Alto Municipal Code outline the City's Administrative Enforcement Process, which is designed as a non-judicial penalty process for achieving compliance. In cases involving violations that are not easily or timely cured through the informal process of informing violators of complaints, the City Attorney's Office will encourage code enforcement officers to initiate the administrative process of administrative citations or compliance orders.

The process for administrative enforcement orders provides for formal written notice detailing the violations and the necessary actions for correcting the violations, and establishing a deadline for compliance. If compliance is not achieved by the deadline, the case proceeds to informal hearing with a hearing officer who has authority to impose enforceable penalties and compliance requirements. City Attorney involvement is not required for administrative hearings, but the Attorney's office will assist code enforcement officers. On rare occasions the Attorney's Office will attend hearings as necessary.

The intent of this Code Enforcement approach is to be compliance oriented, not prosecution oriented. The goal is to have more than 95% of all enforcement matters resolved prior to any administrative enforcement. Less than 1% of all matters should require City Attorney intervention at the criminal or civil court level.

City Attorney Code Enforcement Approach

The departments with code enforcement responsibilities generally work independently to enforce the Municipal Code. The City Attorney's Office is available to provide advice and, in a small number of cases for which the departments have difficulty achieving compliance, enforcement support.

Although most code enforcement cases are anticipated to be resolved informally or through the administrative enforcement process, stronger enforcement measures may be necessary in very few remaining cases. Civil enforcement in the form of temporary restraining orders or injunctive relief may be appropriate in cases with imminent health and safety hazards. Similarly, criminal enforcement may be effective in cases that include serious or dangerous violations, involve recalcitrant owners who repeatedly refuse to comply, or when the Attorney's Office determines that civil penalties are unavailable or are likely to be ineffective. Because these measures involve the formal

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judicial process, and the higher costs associated with judicial actions, the Attorney's Office will work with the City's code enforcement personnel to identify the few serious cases where civil or criminal measures are necessary to correct a serious danger and would provide the most effective resolution.

Compliance is always the first objective with code enforcement. However, the cost to the City of delays in compliance can be high. Therefore, the City Attorney will seek full recovery for enforcement costs whenever possible.

City Auditor's Code Enforcement Recommendations for the City Attorney's Office

The City Auditor's March, 2003 audit of code enforcement contained four major recommendations for the City Attorney's Office:

1. Expedite processing of cases referred by code enforcement so that code enforcement officers can properly handle repeat complaints;
2. Provide copies of current case status reports to code enforcement officers so that they can stay informed;
3. Work with code enforcement to consider additional strategies and encourage assessment of appropriate penalties and administrative costs;
4. File liens for penalties that are outstanding over six months.

The code enforcement strategy outlined above should result in compliance with these recommendations because the Attorney's office will continue to work closely with the code enforcement division that discovered and handled violations prior to City Attorney involvement. The City Attorney's office will commit to meeting the four goals that are listed above.

The City Manager and City Attorney believe this code enforcement plan balances reasonable enforcement of the Municipal Code with the City's interest in protecting the health, safety, and welfare of Palo Alto neighborhoods and residents.

Gary Baum, City Attorney

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