



Agenda Date: 8/23/2005
Agenda Placement: 9A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Cathy Gruenhagen for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director, 253-4805
SUBJECT: Code Enforcement

RECOMMENDATION

Discussion direction to staff regarding improvements to the code enforcement efforts initiated by the Department of Conservation, Development, and Planning Department, as follows:

1. Direct staff to prepare an ordinance increasing administrative citations; and
2. Direct staff to prepare a resolution rescinding the March 1998 procedure manual, eliminating the 30-day grace period and universally applying the "investigation fee" for work performed without permit; and
3. Direct staff to prepare a budget transfer increasing appropriations by \$200,000 in Building Division's Fiscal Year 2005-2006 budget to fund County-initiated abatement efforts.

EXECUTIVE SUMMARY

The Director of Conservation, Development, and Planning will present a status report on the Department's code enforcement program, including information about the Department's current process for identifying and resolving Zoning and Building Code violations, a summary of recent accomplishments and outstanding issues, and goals for the future. Overall, the Department allocates approximately 2.5 full time equivalent positions to its code enforcement program, and achieves many positive results. Additional results could be accomplished via three adjustments to the program that will be presented for the Board's consideration.

First, staff will describe issues associated with the use of administrative citations to address code violations, and recent State legislation that would allow the Board to increase the fines that may be levied. With the Board's concurrence, staff would prepare an ordinance affecting this change for the Board's consideration at a future date.

Second, staff will describe current procedures related to work performed without building permits, and possible adjustments to eliminate the 30-day grace period and universally apply an "investigation fee" equivalent to twice the cost of the permit. With the Board's concurrence, staff would prepare a resolution rescinding a 1998 procedure manual and affecting these changes for the Board's consideration at a future date.

Finally, staff will describe situations in which available enforcement remedies -- including penalties, citations, and legal proceedings -- are either inappropriate or ineffectual at resolving code violations, and will request establishment of a violation abatement fund to allow the County's Department of Public Works to undertake certain nuisance abatement activities. With the Board's concurrence, staff would proceed with \$200,000 in funding for County-initiated abatement efforts to be included in the FY05/06 budget adjustment.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	\$200,000 in General Fund revenue plus ongoing Building Division fee revenues and penalties.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Zoning and Building Code enforcement efforts are traditionally funded through a mix of fee revenues and penalties imposed on those who violate the codes. In unusual circumstances when traditional compliance remedies are inappropriate or ineffectual, it may be necessary for the County itself to undertake abatement of the code violation. In these instances, General Fund revenues are used and a lien is placed against the subject property. The County's costs are recovered at the point of sale, possibly many years in the future.
Is the general fund affected?	Yes
Future fiscal impact:	The current request is for \$200,000. Allocations in future fiscal years would be determined based on the effectiveness of the program, the rate at which funds are recovered from the sale of affected property, and the availability of other funding.
Consequences if not approved:	The County will not be able to actively initiate abatement of code violations and will continue to rely on existing enforcement methods, such as penalties, fines, and legal proceedings.
Additional Information:	None

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Conservation, Development, and Planning Department is responsible for the interpretation and enforcement of the Zoning and Building Codes and currently devotes approximately 2.5 staff people (full time equivalents or FTE) to this activity. In addition, the County's Department of Environmental Management devotes approximately 1.5 FTE for expanded enforcement of issues under their purview that are not quickly brought into compliance with

routine inspections. The District Attorney, County Counsel, and their staff are also involved in resolving violations through legal means (civil or criminal), when they cannot be remedied administratively. Coordination among multiple County departments is one of the greatest ongoing challenges associated with the County's code enforcement efforts.

CDP Department Program Summary

Zoning Code violations are those violations which involve uses or densities not permitted in the Zoning Ordinance or for which no approval has been granted. Illegal dwellings are common examples, as are illegal vacation rentals. Violations of specific conditions of approval (e.g. conditions applied as part of a winery use permit) are also considered Zoning Code violations.

Building Code violations typically involve construction work performed without benefit of permits or outside the scope of an approved permit. Technically, permits which have been issued but never finalized (i.e. the work is never completed or no final inspection has been conducted) also constitute Building Code violations. The processes for identifying and addressing Zoning and Building Code violations are illustrated in Attachments A and B. These diagrams and text have been developed to provide a concise summary of current procedures and update the policy manual dated 3/10/98.

With the current allocation of staff resources, the County enjoys some success when it comes to code enforcement, and the number of obvious and persistent violations is far less than it would be otherwise. In 2004, the Conservation, Development, and Planning Department reported the following with regard to Zoning Code Violations:

- | 2004 Official Cases Opened = 48 (illegal business=19%; illegal dwellings=21%; conservation-related=35%; use permit-related=17%; fences/setbacks/signs=8%)
- | 2004 Official Cases Closed = 29
- | 2004 Case Resolution Rate = 60%
- | 2004 Additional Unofficial Complaints Closed w/in 72 Hours = 47
- | 2004 Total Cases Closed = 76
- | Total Cases Opened 1990-2004 = 866
- | Total 1990-2004 Cases Unresolved = 348 (60=active; 5=DA referrals; 283=inactive)
- | 1990-2004 Resolution Rate = 60%

In April 2005, the Department reported the following with regard to Building Code Violations over a two-year period:

- | New Violations Logged = 173
- | Violations Resolved = 108
- | Violations in Plan Check = 16
- | Violations w/No Response = 46
- | Expired Permit Letters = 200
- | Resulting Permits Finialed = 109

Despite ongoing efforts, some Zoning and Building Code violations can take years to resolve. The map included as Attachment C illustrates the location of 10 ongoing Zoning Code violations and 10 ongoing Building Code violations. Each has been selected for inclusion in the "top 10" list either because of the gravity of violation or its duration.

Possible Program Enhancements

While additional staff resources would be required to dramatically expand the County's enforcement program, there are several enhancements which could increase the effectiveness of the enforcement program without increasing staff. The first would increase the fines associated with administrative citations, the second would adjust the procedures used to process Building Code violations, and the third would establish a fund to allow the County to abate certain violations. These three concepts are explained in more detail below:

1. Administrative citations are used when (a) violation notices have been ignored; (b) the severity of the violation does not warrant referral to County Counsel or the District Attorney; and (c) staff feels that this approach is likely to result in correction of the violation. Currently, fines are set at \$100 for the first violation, \$200 for the second violation, and \$500 for the third and each additional violation. Every day that a violation remains uncorrected can constitute a new violation, although in practice it can take several weeks between citations. A property owner who receives a citation may appeal the County's notice of violation to a hearing officer, which can involve expenditure of County resources in excess of the citation amount. Recently enacted Government Code Section 25132(c) now allows, with respect to violations of local building and safety codes, a \$500 fine for the second violation and \$1,000 for third and continuing violations. With the Board's direction, County staff would prepare an ordinance increasing the cost of administrative citations for the Board's consideration at a later date.
2. The County's policy manual establishes an "inspection fee" or penalty equivalent to two times the regular permit fee for violations involving work done without a permit (i.e. requiring an applicant to pay a total of three times the permit fee). Pursuant to a procedure manual dated March 1998, this penalty has been applied only if the property owner submits plans to address the violation more than 60 days after the notice of violation. One half the penalty is due if plans are filed between 30 and 60 days after the notice of violation, and no penalty is due if plans are filed within 30 days of the notice. With the Board's direction, County staff would prepare a resolution rescinding the March 1998 procedure manual, eliminate the 30-60 day "grace" period and universally applying penalties for work performed without permits.
3. In some situations, the most efficient way to resolve a longstanding violation is for the County to abate the violation directly. For example, in the case where an abandoned structure has become an attractive nuisance and a property owner fails to repair or secure the structure after repeated violation notices, the County itself could remove or secure the structure and abate the violation. This would generally occur after a noticed public hearing at which the Board found the property to constitute a nuisance. The County's costs could be recovered by placing a lien on the property, recoverable at the time of sale. Care would need to be exercised to ensure that the County did not assume unnecessary liability (by undertaking abatement on a parcel with hazardous waste, for example), and it may take many years for the County to recoup its costs in instances where the County does not force a sale of the property. With the Board's concurrence, County staff will return with a budget transfer increasing appropriations by \$200,000 in Building Division's Fiscal Year 2005-2006 budget to fund County-initiated abatement efforts. The funds would be used by the Department of Public Works to abate specific violations.

SUPPORTING DOCUMENTS

- A . Zoning Code Violation Process Diagram
- B . Building Code Violation Process Diagram
- C . "Top 10" Zoning & Building Code Violations, August 2005

CEO Recommendation: Approve

Reviewed By: Andrew Carey