



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning & Development  
Department No.: 053  
For Agenda Of: 01/05/2010  
Placement: Set Hearing  
Estimated Tme: 30 mins on 01/19/2010  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn Russell, Ph.D., Director, Planning & Development  
Director(s) (805)568-2085

Contact Info: Dianne Black, Director of Development Services  
(805)568-2086

**SUBJECT: Code Enforcement Program Updates**

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

As to form:

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors set a hearing for January 19, 2010 to:

1. Receive and file a report on Planning and Development Department's Code Enforcement Program;
2. Direct staff to implement a penalty provision in Chapter 10, Building Regulations, of the Santa Barbara County Code;
3. Introduction (first reading) of an Ordinance amending Chapter 24A, Administrative Fines, of the Santa Barbara County Code relating to the issuance of notice of violations to clarify the contents of the notices and the method to serve the notices; and
4. Continue to January 26, 2010 (second reading) to consider the adoption of an Ordinance amending Chapter 24A, Administrative Fines, of the Santa Barbara County Code relating to the issuance of notice of violations to clarify the contents of the notices and the method to serve the notices, to be effective 30 days from adoption.

**Summary Text:**

The Board of Supervisors provided the Planning & Development Department with funding for the 2009-2010 fiscal year in order to appropriately staff the Enforcement Program. Enforcement staff is

responsible for enforcing the requirements of Chapters 10 (Building Regulations), 14 (Grading, Erosion and Sediment Control) and 35 (Zoning) of the Santa Barbara County Code. The Petroleum Unit and the Permit Compliance Program is separately staffed and funded. The department reinstated 2 FTEs to the Enforcement Program following the funding provided by the Board. The department also began a comprehensive review of the overall effectiveness of the Code Enforcement Program and has revised its internal procedures to more effectively use the tools available to achieve compliance with the County Codes and to bring the program in alignment with the County's ACE principles.

On January 19, 2010, staff will provide a report on the Enforcement Program, outlining the current enforcement procedures as recently revised. The report will also include a synopsis of the current Appeal Hearing Officer procedures for Board consideration. In addition, staff will also provide a briefing on the department's penalty fee provision as it relates to land development planning permits and seek board direction on implementing a similar provision in Chapter 10 (Building Regulations) for building permits obtained in response to violation(s) determined on the property. Finally, staff will recommend minor amendments to Chapter 24A (Administrative Fines) to clarify the contents of Notice of Violations issued and the method to serve the notices.

### **Background:**

The Code Enforcement staff of Planning & Development are responsible for enforcing the requirements of Chapters 10, 14 and 35 of the Santa Barbara County Code. The standards set forth in these chapters of the County Code were adopted by the Board of Supervisors and were intended to maintain public health, safety, and welfare while protecting the community's values and natural resources.

During the budget preparation for the current fiscal year (FY 2009-2010), Planning & Development Department proposed eliminating positions for enforcement staffing as part of the County-wide mandate to reduce costs. During the budget hearings, however, the Board of Supervisors reallocated approximately \$210,000 to reinstate staffing to the Enforcement Program.

Additionally, as part of the Department's ongoing process improvement efforts, the department re-examined the Enforcement Program as a whole and discovered some barriers to program efficiency. As such, the department began revising its internal procedures to bring the program in alignment with the County's ACE principles of Accountability, Customer-Focused and Efficiency, and recommends minor changes to the Administrative Fine Ordinance and penalty fees for building and grading permits obtained to resolve a violation.

### **A. ENFORCEMENT PROGRAM**

The intent of the enforcement program is to ensure compliance with the County Codes and at its inception, the department adopted a gentler approach in order to encourage property owners to correct violations willingly before the department used all of the tools available under Chapter 24A. Informal violation letters were sent to property owners, advising them that a violation was found to exist and strongly encouraging them to correct the violation. While this approach yielded cooperation from some property owners, many property owners made only minimal efforts to attempt correction in response to the informal letters, yielding slow or incomplete results. Those that chose to pursue a permit to legalize the violation often did so very slowly, and requests for extensions were regularly granted in the spirit of

cooperation with the property owners. As a result, many enforcement cases have remained open for several years without obtaining compliance or the issuance of a formal Notice of Violation.

The department has initiated a new approach to gain compliance with the County Codes by actively using the tools in Chapter 24A. Immediately following the filing of a complaint, enforcement staff sends an initial contact letter informing the property owner of a potential violation, and that staff will conduct a site inspection within 7-10 business days, on non-health and safety complaints. Upon site inspection, if a violation is determined to exist on the property, the department issues a Notice of Violation immediately pursuant to Chapter 24A, thereby eliminating the informal violation letter to the property owner. The Notice of Violation will typically provide the property owner with 30 days to correct the violation, and property owners may request an extension to comply with the Notice of Violation. However, such requests must include valid reasons for why the extension is necessary, and requests are subject to approval by the Deputy Director. Failure to correct the violation, or request an extension by the designated due date in the Notice of Violation will result in the immediate issuance of a Notice of Determination of Fine pursuant to Chapter 24A. Fines are typically assessed at \$100 per day for the initial Notice of Violation, \$200 per day for the second Notice, and \$500 per day for the third and subsequent Notices.

Property owners who elect to correct their violation via an available permit process will be required to sign an agreed-upon abatement schedule that provides clear timelines to achieve the various milestones in the permitting process. This schedule puts the property owner on notice that the mere submittal of an application is insufficient to suspend enforcement action. Revisions to the abatement schedule may be approved if there is good cause to do so (e.g. surveys, complex engineering necessary to complete the review, etc). The Notice of Violation remains in effect during the permitting process, and as long as the abatement schedule is being followed, no Notice of Determination of Fine shall issue. However, any failure by the property owner to meet a milestone, or to request a revision to the schedule will result in the issuance of a Notice of Determination of Fine. P&D staff will monitor the schedule to ensure continued progress.

The department has implemented a joint violation process for violations that span multiple County Codes. For example, where a property owner is in violation of Chapter 10 (Building Regulation) and Chapter 35 (Zoning), two enforcement cases will be simultaneously created, one to enforce the provisions of Chapter 10 and another to enforce the provisions of Chapter 35. This allows for easier tracking of the various violations and provides the department with additional tools to bring the property owner into compliance. The joint violation process will provide the property owner with an assigned zoning enforcement staff person who will act as the lead contact and assist the property owner through the necessary steps to correct both violations. Emphasis will be placed on the enforcement staff to coordinate with each other when processing the joint violation cases to ensure consistency in communication/correspondence with the property owner.

The following is a summary of changes already implemented to the enforcement procedures in order to address existing issues with the previous process:

- Informal violation letters have been eliminated to gain compliance in a more timely manner;
- Requests for extensions and responses to those requests must all be in writing for better tracking and communication between staff and property owners;

- Joint enforcement cases are created on complaints that involve both building and zoning issues, and zoning enforcement staff acts as lead contact in resolving both violations types in an expeditious manner;
- Abatement schedules have been implemented to ensure timely compliance with resolving violations via the permit process;
- A new progress billing has been instituted that allows billing to occur at appropriate timeframes rather than only at the end of the process (which could take several years).

## **B. PENALTY FEE PROVISIONS**

Currently, planning permits that are submitted in response to a zoning violation on the property are subject to a penalty fee. The purpose of the penalty fee is to deter property owners from bypassing the requirements of the County Code. The land development fee schedule adopted by the Board on January 27, 2009 requires applicants to pay all permit fees plus a “penalty fee equal to all applicable permit fees up to \$2,000” if the permit is submitted to legalize a zoning violation found on the property.

A penalty fee provision does not currently exist for building permits that are submitted to legalize a building code violation. Neither the Building & Safety fee schedule adopted by the Board on September 16, 2008 nor Chapter 10 (Building Regulations) includes a penalty fee on building permits that are submitted to correct building code violations. Staff requests direction from the Board on whether such a penalty fee should be established in order to deter owners from building without permits, and if so, what maximum penalty amount should be specified, such as the \$2,000 maximum penalty on planning permits.

## **C. CHAPTER 24A AMENDMENTS**

The Board is asked to consider adopting an ordinance amending Chapter 24A to (1) clarify the contents of a Notice of Violation, and (2) clarify service requirements for Notices of Violations and Notices of Determination of Fines.

### *1. Contents of Notice of Violations*

Under Chapter 24A, when a department issues a Notice of Violation, the notice shall specify the “conditions constituting violations on the property” (Section 24A-2(b)(1)). However, violations to the County Code are not always parcel-related violations and violations to Chapter 35 could be related to violations of permit conditions. Since Chapter 24A grants authority to the department to enforce the requirements of Chapter 35, (which includes violation of non-parcel related permit conditions). Staff is recommending that the ordinance be amended to reflect that a Notice of Violation may issue even if the violation is non-parcel related and the notice of violation shall specify the “conditions constituting the violation” not just conditions constituting violations on the property.

### *2. Service Requirements for Notices of Violations and Notices of Determination of Fines*

Pursuant to Chapter 24A, Notices of Violations and Notices of Determination of Fines shall be transmitted to the owner “by certified mail or personal service by a public officer” (Sections 24A-2(b), 24A-6(b)).

Since the inception of the Enforcement Program, the department has held itself to a higher standard than the standard set forth in Chapter 24A when transmitting these notices to the property owner. As such, the department had previously transmitted Notices of Violations and Notices of Determination of Fines via certified mailing and requested a signature receipt to ensure that property owner has received these notices. However, this practice has proven to be problematic recently for enforcement staff, as many property owners have begun to refuse delivery of these Notices, frustrating enforcement efforts.

The standard set forth in Chapter 24A only requires that the department transmit these notices via certified mailing. There is no language in the ordinance that specifically requires the department to obtain signature confirmation nor does it require acknowledgment from the property owner that he/she has received the Notices. The spirit of the ordinance is to ensure that the property owner is put on notice that a Notice of Violation or a Notice of Determination of Fine has been issued, and so long as delivery can be confirmed by the postmaster, a signature receipt by the property owner is unnecessary. It is unreasonable to assume that the ordinance would allow property owners to bypass the procedures of Chapter 24A by refusing to acknowledge receipt of these transmittals. Therefore, the department intends to change to a procedure where Notices of Violations and Notices of Determination of Fines will continue to be transmitted to property owners via certified mailing as required under Chapter 24A, but the department will no longer require a signature receipt to confirm delivery. Delivery will be confirmed upon the date of delivery indicated by the postmaster on the return receipt. The Board is asked to consider the proposed amendments to Chapter 24A to clarify service requirements for Notices of Violations and Notices of Determination of Fines.

#### **D. ADDITIONAL ENHANCEMENTS**

In addition to the internal changes to the enforcement program, the department has also implemented additional enhancements to better achieve the County's ACE goals of accountability, customer-focus and efficiency.

Improved communication procedures have been created. New informational letters regarding final disposition of all cases will be sent to property owners as part of case close out. The letters will give property owners affirmative communication that the violation has been resolved. Closure letters will also be sent to owners if a violation was not substantiated.

The department has also added a code enforcement public information page on the department's website explaining the enforcement program. The site includes a list of frequently asked questions as well as a flow chart diagram of the process. The enforcement webpage may be accessed through the department's website at: [www.sbcountyplanning.org](http://www.sbcountyplanning.org).

Finally, the Accela permit tracking software was leveraged to better track the issuance of Notices of Violations and Notices of Determination of Fines. This change will improve management of Notices of Violations, and the tracking of payments and appeals on Notices of Determination of Fines.

#### **Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

Costs for the preparation of this report are budgeted in the Administration program of the FY 2009-2010 adopted budget.

**Special Instructions:**

1. The Planning and Development Department will satisfy all noticing requirements.
2. The Clerk of the Board will send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Linda Liu.

**Attachments:**

- A. Code Enforcement Process Flow Chart
- B. Chapter 24A
- C. Ordinance amending Chapter 24A

**Authored by:**

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**CC:**

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