



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: Third Supervisorial
District
Department No.: 230
For Agenda Of: 01/10/2012
Placement: Departmental
Estimated Tme: 15 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Supervisor Doreen Farr, Third District
Director(s)
Contact Info: Chris Henson, Executive Assistant, 568-2197
SUBJECT: **Waiver of Double Fee Penalty for Permitting Los Olivos Sign Violations,
and Potential Land Use and Development Code Amendments Regarding
Double Fee Penalties and Sign Standards**

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions: That the Board of Supervisors:

- A. Waive the double-fee penalty required under Planning and Development's Fee Resolution and the County Land Use and Development Code (LUDC), Section 35.108.080 for permit fees assessed on Los Olivos sign violations reported on July 6, 2011.;
- B. Direct the Planning and Development Department (P&D) to process an amendment to the LUDC, Section 35.108.080 "Processing Fee Penalty Assessment" that would provide discretion to the P&D Director to waive the double-fee penalty based on specified guidance delineated in the amended language;
- C. Direct P&D to include in its draft 2012-2013 Work Program for the Board's consideration an update of the LUDC, Chapter 35.38 "Sign Standards."

Summary Text:

1. Waiver of the Double-Fee Penalty

P&D's zoning enforcement program is executed in accordance with the LUDC; it is largely a complaint-driven program. On July 6, 2011, P&D received a complaint about illegal signs in downtown Los Olivos that affects many businesses. P&D has since determined that there were

135 illegal signs, 70 of which may only be abated by removal and 65 of which may be abated by obtaining a permit; i.e., a Sign Certificate of Compliance (SCC). These 65 permissible signs affect 42 individual businesses.

As described in more detail below, the LUDC and Fee Resolution for zoning permits establishes a fee of \$625 for each SCC, but also establishes a double-fee penalty for permitting costs, up to \$2,000, thereby making the permit fee \$1,250 per SCC. At the date of preparation of this Board letter, P&D has already collected a double-fee penalty on 15 SCC permit applications that have been submitted for processing to abate the sign violations, and the double-fee penalty for these 15 applications equals \$9,375. The department estimates that it will receive between five and nine additional applications related to this zoning violation, and would amount to an additional \$3,125-to-\$5,625 in double-fee penalties. The number depends on whether the property owner will submit an application for all tenants or leave it to the tenants to submit individual applications.

The Third District office respectfully requests the Board of Supervisors to waive the double-fee penalty for these cases, thereby reducing the fee requirement to \$625 per SCC, the normal processing fee. P&D would refund any double-fee penalty already collected for the foregoing permit applications. Our reasons for recommending a waiver of the double-fee penalties are as follows. First, it affects the Los Olivos businesses during difficult economic times. Second, many of these signs have been in place for years. Third, affected businesses responded immediately to staff upon notification of a violation, and have been cooperating in abating the illegal signs. This fee waiver would not impact the General Fund, because normal permit fees and separate zoning-enforcement costs would still be recovered as usual. If the Board of Supervisors approves this request, P&D would refund \$625 to those who have already paid the double-fee penalty.

2. LUDC Amendment to Allow P&D Director Discretion to waive Double-Fee Penalties

The Third District office believes that the Board should provide the P&D Director with more discretion to decide when the double-fee penalty is assessed. Currently, the LUDC and applicable Fee Resolution do not provide any discretion to waive double-fee penalties. However, a person subject to a zoning violation may appeal the amount of enforcement costs charged to cover staff time to abate the violation. We recommend that P&D process amendments to:

LUDC Section 35.108.080, “Processing Fee Penalty Assessment,” which currently reads in part:

Any person who shall alter, construct, enlarge, erect, maintain, or move any structure, or institute a use for which a permit is required by this Development Code without first having obtained the permit, shall, if subsequently granted a permit for that structure or use, or any related structure or use on the property, first pay an additional penalty permit processing fee for after the fact authorization of development, in compliance with the Board’s current Fee Resolution. [Emphasis added.]

The County’s fee resolution for P&D zoning permits, which currently reads:

Where the applicant elects to obtain permits to legalize a violation, standard permit fees described in this fee schedule apply. A penalty equal to all applicable permit fees, but not to exceed \$2,000 is also required.¹

The amendment would provide criteria by which the P&D Director may determine situations

¹ Board of Supervisors Resolution 10-031, page A-5

where administrative waiver of fees would be appropriate. The Third District office believes that penalties can serve as a deterrent in some cases, but should not be applied where an entity is not aware of the violation, and where the entity wishes to abate the violation in a timely manner to avoid such penalty. As an example of potential criteria that be included in the amendment, Section 35-108.070, "Recovery of Costs," of the LUDC, addresses enforcement fees that are appealable; the P&D Director currently serves as the hearing officer for such appeals. The LUDC instructs the hearing officer to include the following factors in the consideration of the appeal:

- Whether the current owner created the violation
- Whether there is a present availability to correct the violation
- Whether the owner moved promptly to correct the violation
- The degree of cooperation provided by the owner
- Whether reasonable minds can differ as to whether a violation exists

As another example of potential criteria, Chapter 24A,"Administrative Fines," of the County code provides criteria for determining the amount of fines if Notices of Violation are not abated in a timely manner. They are:

- The length of time the violation existed
- The culpability of the owner and the willfulness of the violation
- The number of previous violation of the same or related type committed by the owner within the preceding thirty-six months
- The extent of the violation and the effect of the violation on neighboring properties
- Attempts, if any, to comply with the applicable ordinances
- The time necessary to abate the violation
- Any other information relevant to a determination of the fine.

3. Inclusion of an Update to the LUDC Sign Standards in P&D's 2012-13 Work Program

Chapter 35.38, "Sign Standards," of the LUDC was last comprehensively updated in 1970 with the adoption of Article I of the Zoning Code. It is in need of updating, particularly considering the current economically difficult times that many businesses in our County are facing. The Third District office would like to understand the scope and costs of such an update, and to have the Board of Supervisors consider undertaking such an update, as part of P&D's draft 2012-2013 Work Program. This update should include a review of planning fees for processing sign permit requests.

Special Instructions:

N/A