

Ventura County Grand Jury 2013 - 2014



Final Report

Moorpark Zoning Compliance, Tracking, and Reporting

June 9, 2014

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Moorpark Zoning Compliance, Tracking, and Reporting

Summary

The 2013-2014 Ventura County Grand Jury (Grand Jury) investigated reports of inconsistent processing and enforcement of Municipal Code violations in the City of Moorpark (City), as well as questionable awarding of Use Permits by the Moorpark Community Development Department (CDD). This investigation was triggered by a public complaint.

The investigation was performed with the aid of interviews of various cities' employees, examination of various documents provided by interviewees, and web searches.

The Grand Jury found that:

- The Moorpark City Council violated its Municipal Code when it approved a Zoning Clearance for a new business venture that was not permitted by current zoning, against the advice of the City Attorney. Because of agreements between the City and the developer before the Zoning Clearance was approved, the developer was able to postpone submittal of CDD-specified permit applications and processing fees. By granting the Zoning Clearance prematurely, the City effectively waived its enforcement leverage and this frustrated subsequent compliance efforts. CDD processes and actions proved ineffective in obtaining compliance of the new business venture use for 17 years.
- The City organizational structure does not provide for adequate and timely management oversight and technical review of Zoning Clearances or permits.
- CDD processes do not require review of CDD permits by an independent Municipal Code Subject Matter Expert (SME).
- The CDD does not have an effective warning/alarm/time-reporting process (e.g., flags in reports or time duration metrics) for alerting City management and CDD personnel about exceptional time-limit status of pending/outstanding violation actions and permit expirations.
- The CDD is handicapped in keeping records because it does not maintain a centralized database containing date-tagged status logs of significant transactions, such as discussions, meetings, or correspondence involving Municipal Code compliance-related issues. The current methods for keeping status are inadequate and fragmented.
- The information currently provided to City management by CDD-generated permit summary reports lacks important status concepts that would provide transparency to management.

- Comprehensive reports need to be created and available to fully brief and alert successor CDD Directors about problem compliance cases. This need was demonstrated by the fact that the CDD lost track of a developer's new-business use case sometime during the periods of frequent turnover of past CDD Directors. Lack of summaries with sufficient historical details of issues, such as those associated with a developer's permit situation, can lead to—and has led to—total case loss by the CDD.
- Briefings and briefing materials supplied by the CDD for City management tend to be limited to what the CDD thinks the City management needs to know and what can be readily provided. Because of the deficiencies in the current report formatting, City management does not have access to an effective independent monitoring mechanism.

The Grand Jury recommends the following actions:

- The City Council should re-examine its policies, procedures, and training material to include directives that emphasize the risks involved to the City in working out inappropriate undocumented agreements between the City and developers or Municipal Code violators.
- The City Council should direct the CDD to develop and adopt a unified and robust solution for maintaining permit and Municipal Code compliance status information critical to producing current and historical status reports and supporting independent audits of the CDD.
- The CDD should use a centralized computer database solution for maintaining status. This database should be based on a date-stamped log of each significant transaction step during the processing of permits or Municipal Code violations.
- The CDD should use a database solution that has the capability of automatically producing status reports of Municipal Code compliance-related issues from the status log database, without the need to manually cut and paste or manually enter/edit data into the report files.
- The CDD should use a database solution that has the capability of exporting selectable historical status log information to a file that can be off-line filtered by common desktop computer software tools such as Microsoft Excel. This capability provides greater transparency of CDD operations by allowing more comprehensive auditing of activities recorded in the database.
- The CDD should use a database solution that facilitates transparency of the CDD within the City. Reports generated should always flag cases exceeding critical time-limit attributes, such as original expected compliance date or permit expiration date. Status should

indicate what the next significant action necessary will be, and what is holding up the compliance process.

- The City Council should critically examine the job descriptions of City employees who are expected to have a role in monitoring or commenting on the effectiveness of CDD permitting and Municipal Code compliance activities. Explicit oversight tasks should be designated where appropriate in these job descriptions and employee performance reviews should include a review of how well these duties were performed.
- The CDD should change its processes to provide for an independent critical review by a Municipal Code SME of all permits and correspondence sent to permit applicants and Municipal Code violators.

Background

In July 2013, the Grand Jury reviewed a public complaint alleging inconsistent processing and enforcement of Municipal Code violations in the City, as well as questionable awarding of use permits by the Moorpark Community Development Department.

After review of the allegations, the Grand Jury made a determination that there was sufficient material presented to warrant further investigation.

The investigation focused on zoning compliance issues involving several properties in Moorpark. A specific property was selected for comprehensive investigation because of its long history of noncompliance. This property involved the establishment of a new business venture on land that was not zoned to support the proposed use. Compliance with the Municipal Code Zoning Ordinance took almost two decades; tracing the timeline of activities during this period provided the Grand Jury with a vehicle to assess the long-term effectiveness and risks of CDD policies and procedures.

Methodology

The Grand Jury interviewed several City employees who could be expected to have a potential responsibility for code compliance and employees of other Ventura County cities for comparison with Moorpark's practices, as well as reviewing documents provided by interviewees and web searches.

Prior to the interview process, the Grand Jury developed a list of questions intended to cover the range of issues planned for the investigation. During the interview process questions were selected from this list, as appropriate, based on the interviewee's job function. This interview style allowed gauging an individual's awareness of and knowledge about the issues that were being investigated. It also allowed observations about the effectiveness of City and CDD policies/processes.

The investigation focused on the following issues of concern:

- Methods used for arranging and awarding Conditional Use Permits (CUP).
- Methods used and justification for awarding Temporary, Administrative, and Conditional Use Permits.
- Methods, tools, and procedures used to log and track Municipal Code complaints and violations.
- Methods, tools, and procedures used to log and track permits and expirations.
- Methods, tools, and procedures used to prepare status reports of in-process, expiration-pending, and expired permits.
- Awareness by City management and CDD staff of current code compliance status.
- Roles played by City and CDD management in arranging and achieving code compliance.

Facts

FA-01. Various elements of City government have defined roles in Municipal Code compliance or oversight:

- The City of Moorpark was incorporated in 1983 as a General Law city. Since inception, the City has featured its “business friendly” policies. [Ref-01]
- The elected City Council sets the policy direction for City operations and programs. The City Council appoints the City Manager to implement and administer council decisions and policy directives. [Ref-01]
- The City Manager directs and coordinates the activities of the City departments through department heads. [Ref-01]
- The City Attorney represents the City of Moorpark in all legal affairs, provides legal advice and assistance to the City Council and staff, and engages in litigation as needed. [Ref-01]
- The five-member Planning Commission is appointed by the City Council. The Planning Commission is responsible for development reviews of various entitlement requests and advises the City Council on matters related to the General Plan, Zoning Ordinance, capital improvement programs, and community development. [Ref-01]
- The Community Development Department is the primary department responsible for oversight of development in the City. The department assists the City Council, Planning Commission, the public, and the development community in meeting the goals of the Moorpark General Plan, complying with the Moorpark Zoning Ordinance and applicable specific plans, and development in accordance with applicable state and federal laws. [Ref-01]

- The CDD is comprised of four functional divisions: Administration, Building & Safety, Code Compliance, and Planning. [Ref-01]
- CDD Administration (i.e., CDD Director and support staff) provides overall direction for the various divisions and provides support for each of the functions of the department. [Ref-01]
- The CDD Director is responsible for and administers the Code Compliance Program. [Ref-02]
- CDD Planning is responsible for the administration of the General Plan, Specific Plans, the Zoning Ordinance, and assistance to the public and the development community in meeting development requirements. [Ref-01] The CDD Principal Planner is responsible for supervision of the Code Compliance Officer.
- The CDD Code Compliance staff, including assigned supervisor, are the direct line staff responsible for implementation of the Code Compliance Program. [Ref-02]
- CDD Code Compliance (i.e., the Code Compliance Officer) reviews property for proper maintenance; graffiti on private property; compliance with the sign ordinance; adopted conditions of approval; local, state, and federal law; and zoning, building, and engineering codes. [Ref-01]

FA-02. As a partial result of the 2003-2004 Ventura County Grand Jury Report, *Moorpark Excessively Aggressive Code Enforcement and Development Process*, the City developed a more community friendly, less adversarial, and formally documented Code Compliance Program. [Ref-03] The resultant document, *City of Moorpark Code Compliance Program*, was last updated April 25, 2012, and approved by the City Council. [Ref-02]

FA-03. The Moorpark Municipal Code contains rules (e.g., nuisances, building safety, zoning, permits) that the CDD is chartered to operate by and enforce. [Ref-04]

FA-04. The CDD staff has developed a series of forms, letters, and documents used in enforcing the Municipal Code. [Ref-02]

FA-05. The Code Compliance Program emphasizes working with a Zoning Ordinance violator to achieve voluntary compliance. This potentially lengthy process allows for issuance of multiple (if necessary) notices of violation; scheduling of CDD Office Hearings; issuing follow-up letters and Administrative Citations; requesting the City Council to authorize legal action; issuing Notice of Pending Court Action; issuing compliance letter to violator by the City Attorney; and recording Notice of Violation against property by the City Attorney to give prospective buyers constructive notice that a violation exists on the property at the time of sale. [Ref-02]

FA-06. Since City incorporation in 1983, there has been only one City Manager.

FA-07. Since incorporation, Moorpark has had five CDD Directors and two interim CDD Directors.

- FA-08.** CDD processes do not provide for an independent critical technical review by a Municipal Code SME of permits and correspondence sent to permit applicants and Municipal Code violators. An independent review is a review done by an individual who did not participate in the target permit application process or the compliance process with the Municipal Code violator.
- FA-09.** The CDD maintains records of citizen complaints and Municipal Code violations distributed among:
- Hardcopy “tickler file” records (for active cases) stored in a file cabinet;
 - Hardcopy archive documents (for closed cases) stored in a file room; and
 - Softcopy Excel spreadsheet files stored on a local area network drive.
- FA-10.** The CDD maintains current status records of Pre Permit Applications, Administrative Permits, Conditional Use Permits, and Temporary Use Permits, in Excel spreadsheets. These records display the following characteristics:
- Status of currently open permits updated in place, thereby overwriting the previous status.
 - No provision to show the original expected completion date of open permits.
 - No provision to automatically flag open permits that are approaching (for example, within 90 days) or have exceeded the original expected completion date, as well as displaying number of days away from original expected completion date.
 - No provision to automatically flag permits that are approaching (for example, within 90 days) or have exceeded the expiration date, as well as displaying number of days away from expiration date.
 - At the end of a reporting period, overwritten Excel worksheets printed as reports for distribution to CDD Director, Deputy City Manager, and City Manager.
- FA-11.** The expiration dates of awarded permits may be tracked informally (for example, on a personal calendar).
- FA-12.** No database is maintained that can export complete softcopy historical data of active and closed CDD permit and zoning violation cases. Lacking this export capability inhibits the ability to perform effective audits of CDD performance.
- FA-13.** No database is maintained that can be used to automatically produce filtered summary reports of active CDD cases. Reports lack status descriptions of actions needed to close open cases; they lack flags or alarms on cases that are approaching (for example, within 90 days) or have exceeded the original expected completion date; and they lack

display of the number of days away from the original expected completion date.

- FA-14.** No database is maintained that can be used to produce reports identifying expired or soon to expire awarded permits.
- FA-15.** In 1974 a property was initially approved for an “original” use under a Ventura County approved Development Permit.
- FA-16.** The City rezoned this property in 1992 to Commercial Planned Development (CPD), making the approved original use on the property a “legal nonconforming” use in its CPD zone.
- FA-17.** Later the developer proposed developing the property for a “new use” different from the existing legal nonconforming use.
- FA-18.** In October 1994, the CDD Director proposed and the City Council approved a Temporary Zoning Clearance intended to allow the developer to develop a new business usage on the property. The CDD Director notified the City Council that the proposed use would require a Zoning Ordinance Amendment and a Planned Development Permit to be in compliance with the CPD zoning. The Temporary Zoning Clearance imposes a condition to complete applications for the amendment and permit within an 18-month time limit for the developer (with a possible 6-month extension).
- FA-19.** In November 1994, the City Attorney notified the CDD that a Temporary Zoning Clearance is not permitted by the City Municipal Code because it is both temporary and conditional.
- FA-20.** In November 1994, a developer’s representative notified the CDD Director of previous discussions between the developer and the City and past City Council deliberations. They concluded that once the economic feasibility of the business use is established on this site, largely determined by demand, then the developer will consider making the use more permanent by applying for a Zoning Ordinance Amendment and Commercial Planned Development Permit.
- FA-21.** In November 1994, based on the CDD Director’s recommendation, the City Council rescinded the previously issued Temporary Zoning Clearance and issued a Zoning Clearance. The conditions in the Zoning Clearance were the same as the Temporary Zoning Clearance except that the word “Temporary” was omitted from the title. The Zoning Clearance was still “conditional” in spite of the City Attorney’s advice (when reviewing the Temporary Zoning Clearance) that the Municipal Code does not provide for a Zoning Clearance to be conditional.
- FA-22.** The Municipal Code states that a Zoning Clearance certifies that a proposed land/building use currently complies with the property zoning. *The Zoning Ordinance does not provide for issuing a certification based on anticipation of future activities to bring proposed use into compliance.*
[Ref-04]

- FA-23.** No independent critical review was performed attesting to the validity of the Zoning Clearance.
- FA-24.** In January 1995, the developer's new business venture opened for business.
- FA-25.** In subsequent years, during which there were periods of frequent change of CDD Directors, there were sporadic attempts by the CDD to engage the developer to complete the requested permit applications and submit necessary fees. During this period, the CDD issued several time extensions, apparently to give the developer more time to apply. The last recorded engagement was July 1998, when the CDD notified the developer that it was still necessary to submit a complete application for the required CUP.
- FA-26.** In December 2011, the developer made an inquiry to CDD staff on the permit status of the property. The CDD discovered that they had lost track of the case sometime after 1998.
- FA-27.** From July 1998 to December 2011 (13½ years' duration) there was no apparent activity to obtain compliance (i.e., the CUP) by either the City or the developer.
- FA-28.** In March 2013, after City/developer negotiations, the City Council approved a CUP for the developer's "new use."
- FA-29.** The Grand Jury did not find any evidence that the City Attorney was engaged to seek compliance in court or the recording of a Notice of Violation during the 17-year developer's "new use" zoning noncompliance period (November 1994 to December 2011).
- FA-30.** Until 1998 the CDD was involved in identifying zoning violations and authoring several memoranda sent to the developer seeking compliance.
- FA-31.** Through the Grand Jury interview process, it appears that a reasonable consensus estimate, reflecting opinions of several City officials, is that *nominally it should take no longer than 12 months to obtain a CUP and Zoning Ordinance Amendment* for a new business venture in the City, starting with initial zoning and use conditions similar to those existing on the property in 1994.

Findings

- FI-01.** The Moorpark City Council violated the Municipal Code when it approved a Zoning Clearance for a new business venture that was not permitted by current zoning, against the advice of the City Attorney. Because of agreements between the City and the developer before the Zoning Clearance was approved, the developer was able to postpone submittal of CDD-specified permit applications and processing fees. By granting the Zoning Clearance prematurely, the City effectively waived its enforcement leverage and this frustrated subsequent compliance efforts. CDD processes and actions proved ineffective in obtaining compliance of the

new business venture use for 17 years. (FA-01, FA-03, FA-04, FA-05, FA-06, FA-07, FA-08, FA-09, FA-10, FA-11, FA-12, FA-13, FA-14, FA-15, FA-16, FA-17, FA-18, FA-19, FA-20, FA-21, FA-22, FA-23, FA-24 , FA-25, FA-26, FA-27, FA-28, FA-29, FA-30, FA-31)

- FI-02.** The City organizational structure does not provide for adequate and timely management oversight and technical review of Zoning Clearances or permits. (FA-01, FA-02)
- FI-03.** CDD processes do not require use of independent Municipal Code SMEs for review of CDD permits. (FA-08)
- FI-04.** The CDD does not have an effective warning/alarm/time reporting process (e.g., flags in reports, time duration metrics, etc.) for alerting City management and CDD personnel about exceptional time limit status of pending/outstanding violation actions and permit expirations. Omitting the concept of time can allow problem cases to slip schedule indefinitely. Likewise, no metrics are tracked to dramatize the extent of overdue projects. (FA-10, FA-11, FA-12, FA-13, FA-14)
- FI-05.** The CDD is handicapped in keeping records because it does not maintain a centralized database containing date-tagged status logs of significant transactions such as discussions, meetings, or correspondence involving Municipal Code compliance-related issues. The current methods for keeping status are inadequate and fragmented. (FA-09, FA-10, FA-11, FA-12, FA-13, FA-14)
- FI-06.** The information currently provided to City management by CDD-generated permit summary reports lacks important status concepts that would provide transparency to management. Reports lack original estimate of completion date; current estimate of completion date; cumulative processing time; expiration date of time-limited permits; flag-alerts of excessive processing time for violations; permit applications or permit expirations that have exceeded original estimated completion date; and detail about what is holding up processing completion. Status text should be more descriptive than simply "Open" or "Closed." In a status report, an open case should have an adequate text description of why it is still open. (FA-09, FA-10, FA-11, FA-12, FA-13, FA-14)
- FI-07.** Comprehensive reports need to be created and available to fully brief and alert successor CDD Directors about problem compliance cases. This need was demonstrated by the fact that the CDD lost track of a developer's new-business use case sometime during periods of frequent turnover of past CDD Directors. Lack of summaries with sufficient historical details of issues such as those associated with a developer's permit situation can lead to—and has led to—total case loss by the CDD. (FA-07, FA-09, FA-10, FA-11, FA-12, FA-13, FA-14)
- FI-08.** Briefings and briefing materials supplied by the CDD for City management tend to be limited to what the CDD thinks the City management needs to know and what can be readily provided. Because of the deficiencies in the current report formatting, City management does not have access to an

effective independent monitoring mechanism. (FA-09, FA-10, FA-11, FA-12, FA-13, FA-14)

- FI-09.** Being overly “business friendly” or “community friendly” can have significant consequences to the City, as the situation with the Zoning Clearance investigation demonstrated. The Grand Jury investigation determined that such agreements can establish an unintended precedent that can later be exploited by a developer or violator to obstruct the City’s zoning-compliance efforts. (FA-01, FA-02)

Recommendations

- R-01.** The Grand Jury recommends that the City Council re-examine its policies, procedures, and training materials to include directives that emphasize the risks involved to the City in working out inappropriate, undocumented agreements between the City and permit applicants or Municipal Code violators. (FI-01, FI-02, FI-09)
- R-02.** The Grand Jury recommends that the City Council direct the CDD to develop and adopt a unified and robust solution for maintaining permit and Municipal Code compliance status information critical to producing current and historical status reports and supporting independent audits of the CDD. (FI-04, FI-05, FI-06, FI-07, FI-08)
- R-03.** The Grand Jury recommends that the CDD use a centralized computer database solution for maintaining status. This database should be based on a date-stamped log of each significant transaction step during the processing of permits or Municipal Code violations. For example the database should include memoranda and e-mails sent/received; permit applications received; and permits granted. Copies of scanned documents sent to or received from clients should be preserved in the database. Links to these documents should be included in the corresponding status log record. Multiple violations and compliance actions on a property should be tracked independently but linked so that consolidated reports can be generated. (FI-04, FI-05, FI-06, FI-07, FI-08)
- R-04.** The Grand Jury recommends that CDD-prepared status reports of Municipal Code compliance-related issues should be automatically producible from the status log database, without the need to manually cut and paste or manually enter/edit data into the report files. Multiple violations on a property should be displayable independently as well as consolidated. (FI-04, FI-05, FI-06, FI-07, FI-08)
- R-05.** The Grand Jury recommends that the CDD database solution have the capability of exporting selectable historical status log information to a file that can be off-line filtered by common desktop computer software tools such as Microsoft Excel. This capability will provide greater transparency of CDD operations by allowing more comprehensive auditing of activities recorded in the database. (FI-04, FI-05, FI-06, FI-07, FI-08)

- R-06.** The Grand Jury recommends that the CDD database solution facilitate transparency of the CDD within the City. Reports generated should always flag cases exceeding critical time-limit attributes such as original expected compliance date or permit expiration date. The status should also indicate what the next significant action necessary will be and what is holding up the compliance process. (FI-04, FI-05, FI-06, FI-07, FI-08)
- R-07.** The Grand Jury recommends that the City Council critically examine the job descriptions of City employees who should be expected to have a role in monitoring or commenting on the effectiveness of CDD permitting and Municipal Code compliance activities. Explicit oversight tasks should be designated where appropriate in these job descriptions and employee performance reviews should include a review of how well these duties were performed. (FI-02, FI-03)
- R-08.** The Grand Jury recommends that the CDD change its processes to provide for an independent critical review by a Municipal Code SME of all permits and correspondence sent to permit applicants and Municipal Code violators. The independent reviewer could be a CDD employee or an outside consultant. However, this independent review should be done by an individual who did not participate in any aspect of the subject permit application process nor participate in the compliance process with the subject Municipal Code violator. The name of the independent reviewer (i.e., the "SME Approver") should be recorded in the status log database to establish accountability. (FI-02, FI-03)

Responses

Responses required from:

City of Moorpark, City Council (FI-01, FI-02, FI-03, FI-04, FI-05, FI-06, FI-07, FI-08, FI-09) (R-01, R-02, R-03, R-04, R-05, R-06, R-07, R-08)

Responses requested from:

City of Moorpark, City Manager (FI-01, FI-02, FI-03, FI-04, FI-05, FI-06, FI-07, FI-08, FI-09) (R-01, R-02, R-03, R-04, R-05, R-06, R-07, R-08)

City of Moorpark, Community Development Director (FI-01, FI-02, FI-03, FI-04, FI-05, FI-06, FI-07, FI-08, FI-09) (R-01, R-02, R-03, R-04, R-05, R-06, R-07, R-08)

References

Ref-01. City of Moorpark website. <http://www.moorparkca.gov/27/Your-Government> (accessed April 20, 2014)

Ref-02. City of Moorpark, *Policy 4.3: Code Compliance Program*, approved March 07, 2012 by City Council as part of Resolution 2012-3091. <http://moorparkca.gov/documentcenter/view/48> (accessed April 20, 2014)

Ref-03. Ventura County Grand Jury website. *Moorpark Excessively Aggressive Code Enforcement and Development Process*.
<http://vcportal.ventura.org/GDJ/docs/reports/2003-04/MoorparkExcvlyAggrCodeEnf.pdf> (accessed April 20, 2014)

Ref-04. City of Moorpark Municipal Code website (searchable).
<http://qcode.us/codes/moorpark/> (accessed April 20, 2014)

Disclaimer

This report is issued by the 2013-2014 Ventura County Grand Jury. Due to a potential conflict of interest, a member of this Grand Jury was excused from participating in any aspect of the production of this report.

Glossary

TERM

DEFINITION

CDD	Moorpark Community Development Department
City	City of Moorpark
Conditional Use Permit	Permit required prior to initiation of uses in a given zone as specified in the Moorpark Municipal Code Chapter 17.20, where review by the planning commission through a public hearing process is required to determine if the proposed use complies with all necessary findings listed in the table in Chapter 17.44.040 [Ref-04]
CPD	Commercial Planned Development [Ref-04]
CUP	Conditional Use Permit [Ref-04]
Excel	Microsoft Corporation spreadsheet software tool
Grand Jury	2013-2014 Ventura County Grand Jury
Hardcopy	Printed document image
Municipal Code	The rules and regulations by which the City of Moorpark operates [Ref-04]
Nonconforming use	Use that was lawfully established and maintained which (1) is no longer permitted in the zone in which it is located; or (2) is no longer in conformance with the parking requirements of the use in the zone in which it is located (Chapter 17.52.060) [Ref-04]
Permits	Temporary, Administrative, and Conditional Use Zoning Permits

Robust	Describes log or report that contains a comprehensive set of descriptive and useful parameters
SME	Subject Matter Expert
Softcopy	Digital data file or document image stored as a digital file on a computer
Tickler File	A file set up to remind the user at appropriate times of matters that must be attended to
Zoning Ordinance Amendment	City Council-approved amendment to the Zoning Ordinance
Zoning	Zoning rules of Municipal Code (Title 17 of Municipal Code) [Ref-04]
Zoning Clearance	Certification issued by the CDD Director that a proposed use of land or structures meets all requirements of Section 17.44.030 of the Municipal Code and applicable conditions of any previously approved discretionary planned development permit, administrative permit, and/or conditional use permit [Ref-04]