



MOORPARK

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VENTURA COUNTY SUPERIOR COURT

August 26, 2003

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OFFICE OF THE
PRESIDING JUDGE

Honorable Bruce A. Clark
Presiding Judge of the Superior Court
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

RE: Response to the 2002-2003 Ventura Grand Jury Report "City of Moorpark Practices of Code Enforcement and Building and Safety"

Honorable Judge Clark:

This letter is in response to the above-referenced Grand Jury Report. Comparisons of costs, process and procedures of a city to a county's operation is misleading. Counties operate substantially different than cities do, and while it is both cities' and counties' mission to serve the public, in this instance service is not comparable and should not be used as a basis for an investigation.

Findings:

We have reviewed the Findings section of the Report and find concurrence with Findings 1-7, 20, 24, and 25. We concur in part with Findings 8, 17, 12-14, 22, 23 and 26. We do not concur with Findings 9-11, 15, 16, 19, and 21. Below we have detailed our reasons for concurrence in part and for non-concurrence.

Concur:

- F-1. In the different cities, code enforcement personnel reported to different departments. See Table 1.
- F.2. Responses received from the cities indicated that some did not track the data requested and that there were no systems in place from which to supply the data requested.
- F.3. Of the information received from the cities, a sample of comparable information is reflected in Table 2.

- F.4. Some Enforcement Personnel reported to several different departments within the particular city.
- F.5. City enforcement officers generally attempt to clear violations by phone call or a visit but those attempts failing, a notice warning letter will often be written.
- F.6. In notice warning letters, some cities supply detailed instructions on how to appeal the indicated violation though in some cities they do not give such instruction until legal action is undertaken.
- F.7. Most reported or discovered violations occur because the violators are not familiar with code requirements.
- F.20. Some of the obtained documents reflect estimated costs for investigations and "meetings" time.
- F.24. The California Government Code at section 6253 (b), a section of the California Public Records Act, states, "(b) Except with respect to public records exempt from disclosure by express provision of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so." (Emphasis supplied)
- F.25. The California Government Code at section 6253 (d), further states, "(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

Concurrence in Part:

- F-8. When documentation was requested from Moorpark Code Enforcement that would explain the public's right to appeal violation notices and how to accomplish such an appeal, no satisfactory response was forthcoming.

Reason: Other than the building code for appeals of dangerous buildings, there is no codified process for appeal of a violation of the Municipal Code. We have implemented the practice of an office hearing to give the violator an opportunity to discuss the violation with the Code Enforcement Officer's supervisor in an effort to gain compliance with the Municipal Code prior to filing a criminal action with the court by the City Attorney. The court action allows the alleged violator a third party review which serves as an appeal.

F-12. A search of the Internet established that though a set of the Municipal Codes appeared to be available on the Internet, downloading revealed that the documents provided the Jury in the past was not in the Internet Municipal Code nor did the Internet Municipal Code appear to be complete.

Reason: As with all cities, the Municipal Code is updated periodically and not every time there is an adopted change is it immediately posted on the Internet. In Moorpark, the Code is typically updated quarterly or semi-annually based upon the number of new ordinances to be codified. There are times when the Code as it appears on the Internet, would not have all of the updates. In the future, the Internet copy will have an additional section of recently passed, but not yet codified amendments.

F-13. Copies obtained of typical letters sent by Moorpark Code Enforcement to violators revealed, with one exception, that none contained meaningful appellate information.

Reason: The procedure for an office hearing is new and has only recently been implemented as a staff practice. See comments on F-8.

F-14. A visit to the Moorpark Building and Safety Department disclosed that though pamphlets describing code enforcement were available at their location, a similar visit to City Hall disclosed that personnel there were not certain of the availability of information explaining code enforcement and that the rack containing this type of information was fairly empty. City Hall personnel stated, "Things were being redone."

Reason: We concur that pamphlets were available at both locations, even though the supply at City Hall was not full, copies of the pamphlet were available. We are in the process of updating the pamphlet.

F.17. A copy of Moorpark's Building and Safety "Building and Permit Fees," with many pencil changes within the document, was obtained.

Reason: A copy of the Building and Permit Fees was provided but we are not aware of any pencil changes on the document. It is not the City's practice to make changes to fee schedules by penciling in changes.

F.22. Attached to some of the documents received were pages identified as "clearance and approvals," but they were without any indication as to whether they were approved by the city and no fees were listed.

Reason: Handouts were provided that indicated clearance and approvals. There is no need to indicate on a handout listing what clearances and approvals are

needed for a project or permit when the handout is from the City. The point of the handout is to inform the reader what is necessary in order to gain a clearance or an approval.

- F.23. An exhibit obtained by the Jury, titled "City of Moorpark Subdivision Final Processing Fee Schedule" indicated that homeowners are being charged the same fees as are being charged major subdivision developers, i.e., these gross fees are being charged to individual homeowners when improving their lots/homes etc.

Reason: It is true that the City does not differentiate fees relative to whether the construction is being performed by a homeowner or a builder. The reason for not differentiating is that the review is based upon a cost recovery system in order to recover the costs for the review of plans.

- F-26. Citizens, when requesting copies of drawings are being charged exorbitant unpublished hourly rates to have the documents located within the department and are also being subjected to lengthy delays in receiving the requested drawings for duplication.

Reason: The City is aware of one instance where an applicant was charged the normal hourly rate, based upon an estimate of how long it would take to research the requested information. This is standard procedure for research, but in this particular case the research fee should not have been charged since it was a request for information that should have been readily available to the public. The City will return any overpayment made to this person.

Non-concurrence:

- F-9. In response to the Jury's query on code violation appellate rights and procedures, the Jury received copies of various sections and pages from Moorpark Code Enforcement that were identified as relevant material from the Moorpark Municipal Code. It was not clear from this material what a cited violator's appellate rights were.

Reason: The information given the Jury was for the abatement of dangerous buildings as excerpted from the Uniform Building Code. Violations of the Municipal Code are not appealable, except in the instance of violations of the building code. A Municipal Code violation is similar to a traffic ticket. In the case of a Municipal Code violation the code enforcement officer issues the letter, instead of a ticket, noting the violation and requesting compliance. The process is very straight-forward. If compliance is achieved over a reasonable period of time, then the case is closed. If compliance is not achieved in the

timeframe allotted and after an office hearing, then the case goes to the City Attorney for court action.

F-10. Of the Municipal Code documents furnished the Jury, only a section of the code that covered The Federal Water Pollution Act indicated, "that each order shall state that the recipient has a right to appeal."

Reason: The Federal Water Pollution Act provides an appeal process by federal law. The Moorpark Municipal Code does not contain an appeal process relative to violations of the Municipal Code, except in the instance of abatement of dangerous or unsafe buildings, which follows the Uniform Building Code requirements. Also see comments under F-9.

F-11. On further inquiry, City of Moorpark personnel were unable to further detail the requested appellate rights information and reference was made to the Municipal Code on the Internet.

Reason: See F-10.

F-15. In many cities within the County, copies of the municipal codes were readily available for the general public at either the relevant city hall or the Building and Safety department. This was not the case in Moorpark.

Reason: Copies of the Municipal Code are available at the City Hall and Building and Safety/Engineering public counter upon request.

F-16. Moorpark Code Enforcement provided the Jury a "Board of Appeals Application for Hearing" and, attached to it, a Section 501, Chapter 5, "appeals," purportedly from the Moorpark Municipal Code. This section, apparently taken from a 1997 "Abatement of Dangerous Buildings" section indicated 30 days as the time for appeal, and refers to section 401.3 of the code. A search for relevant Section 4 of the code reviewed on the Internet revealed a blank page indicating that it is reserved.

Reason: As is the case in most cities the Uniform Building Code is adopted by reference and is therefore not incorporated into the Municipal Code. The sections were provided to the Jury in response to the question of an appeal process. There is only an appeal process for violations of the Uniform Building Code in reference to the abatement of dangerous buildings. The Uniform Building Code is not available on the City's website due to copyright restrictions.

F-19. A comparison between fees indicated on documents provided the Jury to the fees charged to complainants was not possible because in most cases the

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fees were based on the "official's" subjective estimates of construction costs, or his or her estimate of the cost of inspection and plan review, or in some cases fees were negotiated.

Reason: Each code enforcement case is different and therefore a specific fee to cover all code cases is not possible. Correction of a code violation may involve a number of discretionary and non-discretionary items including, but not limited to a conditional use permit, a planned development permit, a zone change, a variance, a general plan amendment, a zoning clearance, a grading permit or a building permit. Moorpark operates on a deposit basis (full cost recovery) for most applications. It is impossible to give a precise amount for a plan check, until the work has been submitted, that is why estimates are provided.

F-21. Review of some documents provided indicated that no fee listing for such items as grading plan checks, improvement plan checks and geotechnical report review, grading inspection or improvement inspection though such fees are levied.

Reason: This statement is incorrect. The fees are listed on the Fee Schedule.

Recommendations:

We have reviewed the Recommendations section of the Report. Recommendations 2-5 were already in place at the time the Jury visited, Recommendations 11 and 12 have already been implemented. We will be implementing Recommendation 6 by the end of September 2003 when the City's website is revised. Recommendations 7, 9 and 10 will be implemented by the end of December 2003. Recommendations 1, 8, and 13 will not be implemented. Below are the reasons for non-implementation.

R-1. That all cities establish programs to gather readily available code enforcement data in order to make possible their evaluation of the effectiveness of their enforcement programs *vis a vis* the programs of other comparable cities.

Reason: Moorpark does not have control over what other cities do with respect to code enforcement. As mentioned earlier in this letter, each city is different and enforces its Code on the basis of city priorities established by its City Council. Effectiveness, therefore, of an individual city's code enforcement program is not necessarily based upon a comparison of city to city.

R-8. If Moorpark Code Enforcement is using the form "Board of Appeals Application for Hearing", the reference to the Municipal Code should be corrected to agree with the current code.

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Reason: The "Board of Appeals Application for Hearing" is established through the Uniform Building Code (UBC) and references those sections of the UBC that apply. Since the City adopts the UBC by reference and does not renumber the Code no changes are necessary.

R-13. The City of Moorpark performs an audit of past excessive charges and returns such fees to the overcharged citizens.

Reason: The City does not concur with the allegation that overcharges have occurred and therefore, will not perform any audit.

Sincerely yours,



Steven Kueny
City Manager

C: Honorable Mayor and City Council
Joseph Montes, City Attorney
Deborah S. Traffenstedt, City Clerk
Hugh Riley, Assistant City Manager
Barry Hogan, Community Development Director
Joseph Fiss, Principal Planner
Mario Riley, Code Enforcement Officer II