

# **Moorpark Excessively Aggressive Code Enforcement and Development Process**

## **Summary**

Based on an extensive investigation of the matter through discussions with City of Moorpark ("City") officials, personnel of the County of Ventura Sheriff's Department ("Sheriff's Department"), and City residents, the Ventura County 2003-2004 Grand Jury ("Grand Jury" or "Jury") concluded that despite positive efforts by the City council, there exist in the City overly aggressive code enforcement practices. The Grand Jury has recommended a variety of practices that should be instituted to correct this situation.

Further, as part of its Code Enforcement inquiry, the Grand Jury conducted an investigation into reports of alleged development process impropriety involving City of Moorpark officials. Incidents of apparent overreaching include repeated pressuring of builders and developers subject to licensing approvals and other regulation for monetary donations for City events; and demands for excessive park development fees and dedication of land, all under economic coercion. The conclusions reached through this comprehensive review suggest the City development process is arbitrary, overreaching and not in accordance with state regulatory processes with respect to costs, associated development fees and exactions, improvement plan check delays and development of conditions that were focused on addressing unrelated citywide improvements instead of project-specific improvement requirements. In this regard, certain excessive Quimby Act (Govt. Code §66477) ("Act") fees appear to have been calculated and demanded without respect to the Act's restrictions and were later "regularized" by inclusion in a development agreement reached after subjecting the applicant to economic duress.

## **Background**

The Grand Jury received multiple complaints from a variety of citizens from numerous neighborhoods within the City concerning allegations of excessively aggressive code enforcement practices by the City's field staff. The Ventura County 2002-2003 Grand Jury prepared a similar report on this code enforcement issue entitled, "City of Moorpark Practice of Code Enforcement and Building and Safety." The objective documentary information gathered in connection with that investigation was also considered in the preparation of the current report.

Furthermore, the Grand Jury, under power of subpoena, received numerous comments from representatives of developers who expressed frustration and concerns regarding the inconsistency and the excessive delays in receiving project approvals through the development process. Specifically, the City manager, the community development, and public works departments were singled out as being uncooperative in assisting the developers, associated engineering, and land use planning consultants in addressing project issues. The development community provided considerable testimony to the Jury that their efforts to develop within the City were routinely thwarted and the

processing time through the permit review and plan check process was inordinately longer than their experiences with other Ventura County cities. In some cases, these delays were apparently associated with demands for excessive fees and other regulatory plan approvals.

## **Methodology**

### **Code Enforcement Practices**

The Grand Jury has pursued a multifaceted approach to address the allegations of aggressive code enforcement practices. The initial investigations focused on the enforcement allegations that are outlined in the following paragraphs.

The Grand Jury interviewed complainants in this matter concerning their experiences and received responses to previously prepared questions. The interviews also resulted in the Grand Jury receiving written documentation from complainants concerning City code enforcement letters on code enforcement violations and other relevant information.

Thereafter, the Grand Jury interviewed the City manager, community development director, principal planner, and the code enforcement officer about the City's code enforcement organization, its method of operation, information available to City residents on the code enforcement process and the process the City utilizes to resolve conflicts concerning code enforcement violations.

The Grand Jury then met with complainants who provided testimony on their experiences with the code enforcement field staff. The Jury also received written correspondence from the citizens concerning their involvement with the City's code enforcement department. These documents were examined to determine if they contained information relevant to this report.

The Grand Jury also conducted briefings with personnel of the Sheriff's Department, which provides contract law enforcement services for the City. These discussions were initiated because of allegations that the City's field staff frequently and unnecessarily called for backup in the performance of enforcement duties.

The Grand Jury met with City council members to discuss their knowledge of code enforcement policy and to obtain their reaction to these allegations of excessively aggressive code enforcement practices within their city. The Grand Jury had prepared a series of questions for the City council to determine their knowledge of the following items:

- 1) Code enforcement issues.
- 2) Information provided to the council by the community development department on citizen code enforcement complaints for violations.
- 3) City's philosophy concerning the code enforcement process.
- 4) Citations processes and code violation appeal process.

- 5) Community development department public meetings or briefing sessions with residents to explain the objectives of the code enforcement process.
- 6) Their position as to need to improve the level of public outreach at the City Hall public information counter with respect to the availability of pamphlets or brochures, which explain the code enforcement process.
- 7) Their position as to whether the City's code enforcement program is a fundamental component of the City revenue stream.

The Grand Jury scheduled and participated in code enforcement "ride-along" visits in Moorpark and two other Ventura County cities. The purpose of these ride-alongs was to provide further insight into the protocol used by other cities concerning their code enforcement practices, including their interaction with residents of the respective communities.

The Grand Jury developed a comprehensive code enforcement survey that was sent to all ten Ventura County cities and the County of Ventura. The objective of the survey was to report the results to the public and through the information provided by the respective cities and the County, to possibly dispel current misconceptions surrounding those processes. The Grand Jury then developed a comprehensive matrix to determine any patterns with respect to the responses provided in the survey request and to attain a greater insight into the complexities of conducting code enforcement or code compliance activities within the cities of Ventura County.

### **City Development Review Process**

The second major Grand Jury task was an inquiry into allegations that the City's community development and public works departments were excessively difficult to work with, with respect to the permit review and plan check process. The Grand Jury subpoenaed several "most knowledgeable people" and their relevant documents from contractors doing business in Ventura County and in Moorpark in particular. The Jury then conducted a series of individual examinations of these development company representatives and consultants for the purpose of receiving testimony on the fundamental issues associated with problems encountered during the processing of residential and commercial development proposals through the permit process. The Grand Jury received testimony, collected relevant project exhibits, letters and other correspondence.

The Grand Jury was also interested in learning of the practices of other Ventura County cities with respect to the permit process and plan check timelines in comparison to their experiences with Moorpark.

The Jury reviewed the numerous exhibits provided under subpoena by residential and commercial developers concerning their experiences in conjunction with development proposals within the City. The Jury was very interested in the level of cooperation or mediation between the City community development, public works staff and the development industry representatives. Further, the Grand Jury was interested in determining if there were evidence of inconsistencies or arbitrary decisions in the directions provided by Moorpark to developers and determining the level of

communication concerning conditions provided to developers associated with development projects.

## **Findings**

### **Code Enforcement Practices**

- F-01.** There is an apparent inconsistency (i.e., written correspondence or oral communication in the method) by which the code enforcement field staff develops a code violation citation that is then forwarded to City residents.
- F-02.** The code enforcement officer is required to attend a seminar every year concerning customer service and other matters to improve the level of performance.
- F-03.** There are particular areas of the City that appear to be more vulnerable to code enforcement violations than others, i.e., Peach Hill, Mountain Meadows, and Westwood Campus Park West appeared more vulnerable to citation than others.
- F-04.** The City does not have a formal code enforcement violation appeal process other than a brief hearing before code enforcement managers where full compliance is requested. Residents are placed on probation during the interim and the payment of a fine is necessary to finalize the process.
- F-05.** The code enforcement department provides the City council with monthly reports concerning code enforcement activity.
- F-06.** At the present time, the field staff is limited to one code enforcement officer. There does not appear to be any contingency plan to address potential code enforcement activity in the event that the sole employed officer is either on vacation or away from the City.
- F-07.** The current code enforcement officer has extensive interaction with the Sheriff's Department, including conducting training sessions for the Sheriff's Department personnel regarding code enforcement activities.
- F-08.** The current code enforcement officer conducts code enforcement activities on the weekends, while the main activity occurs Monday through Friday.
- F-09.** The current code enforcement officer has been quoted as referring to the Westwood Campus Park West Neighborhood as "disability row."
- F-10.** Residents of the community have indicated that with respect to the inoperable vehicle 72-hour requirement, there is no consistency with respect to the marking of tires to determine the commencement of the prescribed timeframe of that violation.
- F-11.** The current code enforcement officer has requested sheriff backup on numerous occasions in the conduct of his code enforcement duties.
- F-12.** The current code enforcement officer has been observed possessing and displaying handcuffs during the conduct of his duties.

- F-13.** There is some credible evidence that the current code enforcement officer was witnessed being rude and aggressive to a resident in the administration of his code enforcement duties.
- F-14.** Complaining residents assert that current code enforcement officer has not provided residents copies of pertinent sections of the municipal code handbook or extracts thereof despite requests to provide such information.
- F-15.** The City's code enforcement violation fine process is not a major revenue generator for the City though additional cost assessments may provide significant revenue.
- F-16.** Multiple assertions from City residents of harassment by the code enforcement field staff in the conduct of his duties, including the confrontational brandishing of apparently citizen-related paperwork, have been made to the Grand Jury.
- F-17.** The code enforcement department appears to be unreasonably supportive of the present code enforcement officer in the conduct of his duties in the light of numerous resident complaints concerning excessively aggressive code enforcement tactics.
- F-18.** The Sheriff's Department has no record of complaints from City residents concerning the code enforcement officer's interaction with residents, despite the assertion of City residents that they have submitted multiple complaints.
- F-19.** Resident complainants say that the current code enforcement officer does not appear to employ positive customer service alternatives to residents in an effort to amicably resolve code enforcement complaints.
- F-20.** The code enforcement department does not prominently display a hard copy of the Municipal Code at City Hall for review by residents.
- F-21.** Field observations at City Hall suggest that while efforts to provide information on the code enforcement process to residents is being considered, code enforcement literature is regularly found in limited supply or occasionally "out-of-stock" in the brochure racks adjacent to the public information counter.
- F-22.** The Grand Jury ride-alongs with code enforcement officials of two other comparable cities revealed a philosophy of cooperatively working with residents and business owners to achieve amicable compliance.
- F-23.** The code enforcement officers of two cities where ride-alongs took place rarely required or requested law enforcement backup in the administration of their duties.
- F-24.** City officials who review and take final action on citizen complaints regarding the code enforcement officer are his supervisors who appear to give little or no credence to citizen complaint testimony.
- F-25.** The City Council Resolution 2004-2165 dated February 4, 2004, established improvements and renamed the former Code Enforcement Program as the Code Compliance Program. The program objective as contained in the resolution, a positive step to address code compliance issues addressed in last year's Grand Jury report, was designed to promote code compliance through

public awareness. The code compliance work program was divided into three categories: administration, public awareness, and prosecution.

- F-26.** The City council provided testimony that the code enforcement activities within the City are not large revenue generators, and its mission is not to collect fines from City residents.
- F-27.** The City council stated that a primary objective of code compliance is the maintenance of property values and the promotion of health and safety.
- F-28.** The City council was unaware of reports that the City code enforcement officer had allegedly carried and displayed handcuffs in the performance of his field duties.
- F-29.** The City council stated that the community development department has developed a public relations program with community residents with respect to code enforcement.
- F-30.** The Grand Jury learned that the City community development department has decided that the code enforcement field staff is to no longer wear a military or police type uniform. The new dress code includes a polo shirt with the City logo and an ID badge.
- F-31.** Code violations are primarily the result of both City staff observations and citizen complaints as provided for in other comparable Ventura County cities.
- F-32.** Two of Ventura County's ten cities have not established an appellate process for citizens who are the subject of a code violation notice or citation.
- F-33.** Moorpark was the leader for calls for police backup by code enforcement.
- F-34.** The cities within the County are almost equally divided with respect to the requirement that a uniform be required. If civilian attire is the preferred dress mode, then the code enforcement officer is required to wear a city ID badge on his or her shirt in the conduct of his or her duties.
- F-35.** The City has developed new pamphlets for the citizens of the community in an attempt to explain the objectives of the code compliance process.

### **City Development Review Process**

- F-36.** The City's permit review and plan check process are arbitrary, inconsistent and result in long delays and costs with respect to development projects.
- F-37.** The City development fees and exactions, improvement plan fees and special study fees associated with flood control and other engineering or planning studies are considerably higher than those charged by other cities in Ventura County.
- F-38.** The City plan check review process for improvement plans is considerably longer than in other Ventura County cities.
- F-39.** The City does not have any clearly established fee with respect to the recording of a final subdivision map or other permit requirements necessary to development within the City but appears to operate on a demand "all that the market will bear" and let economic duress take care of the bargaining.

- F-40.** The Grand Jury has received testimony from a number of individuals subject to regulation and licensing in connection with the City development process indicating they were repeatedly and persistently solicited for money in the amount of \$500 for the City's annual employee appreciation fund, to offset a portion of the City's costs associated with the program, and for other gifts, such as tickets to professional sporting events. Community development staff has reportedly received benefits from these gifts and donations, e.g., tickets to professional sporting events.
- F-41.** The City also actively pursued donations from residential developers currently engaged in construction, one in the amount of \$5,000 to fund the City's Youth Scholarship Program.
- F-42.** The Grand Jury has received testimony indicating that excessive amounts of Quimby fees were demanded and settlement agreements associated with those fees were required from the City manager's office and the community development department prior to permit approvals for residential developers.
- F-43.** Under the Quimby Act, by local ordinance, the City may require the dedication of land or impose fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map. (Govt. Code §66477)
- F-44.** There must be an ordinance with particularity in effect 30 days before the plan map is filed and Quimby fees may be assessed. The ordinance must detail the standards for the fees. Quimby Act land dedication or fees or a combination of both are permitted if, inter alia, all of the following requirements are met:
- The ordinance for them has been in effect 30 days prior to the filing of the tentative map or parcel map.
  - The ordinance includes definite standards for determining the proportion of a subdivision and the amount of fee to be paid in lieu thereof.
  - The dedication of land or payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres per thousand persons (as further defined in the code).
- F-45.** The City's Quimby ordinance is the relevant Ventura County code provision incorporated by reference by the City under City Ordinance No. 6 in September of 1983.
- F-46.** The City's community development department is hopeful of adopting a revised ordinance of its own later this year.
- F-47.** Testimony was taken that detailed that the demands for excessive Quimby fees were made on a bargaining basis of what can best be described as "whatever could be extorted under the pressure of the economics of construction costs."
- F-48.** It was reported to the Jury that in one instance a Quimby fee of \$8,000 per unit was demanded and allegedly became the City's stated basis for yet higher arbitrary per unit demands.
- F-49.** Except for the basic calculation of acres to be dedicated under the Act, the Quimby fees referred to below are reputed by the developers to have been arrived at arbitrarily without reference to the strictures of the Act.

- F-50.** In a second case a Quimby fee in the amount of \$12,000 per unit (nearly double the typical maximum fee level) was demanded based on the premise that more than the prior \$8,000 per unit Quimby fee must or should be paid.
- F-51.** In the second case the City also demanded the dedication of the land first proposed as setoff to Quimby fees without consideration of setoff as provided for in the Act.
- F-52.** The City manager refused to discuss the matter with one builder by informing the builder before a meeting that the City manager would not discuss the issue. The City manager terminated the meeting and walked out when the issue was raised by the builder.
- F-53.** In another instance the City agreed to a request for discussions of these matters, but the builder was informed the City could not meet with the builder until two months from the requested date.
- F-54.** In yet another instance a builder was told that having its attorney accompany it to a meeting with the City had been “a mistake” and the builder should not bring its attorney to any future meeting.
- F-55.** The City later legitimized or regularized these excessive Quimby fees and exactions by requiring as a condition of City approval that the builders enter into settlement agreements with the City.
- F-56.** The long-term building and economic conditions usually present for entering into such settlement agreements were not apparent in these particular cases.
- F-57.** The Jury received testimony from a public utility concerning demands for excessive extraction fees and extraordinary improvement plan approval delays, as compared to other Ventura County cities, for development of its existing site, the cost of which (including possible forced relocation of the site for economic reasons associated with the City’s demands) would be required by State regulation to be passed on to the rate paying public of the county.

## **Conclusions**

### **City Enforcement Practices**

- C-01.** The City's code enforcement department is excessively aggressive in its code enforcement program in efforts to force total compliance by community residents. (F-11, F-12, F-13, F-16, F-19, F-33)
- C-02.** The code enforcement department’s approach to code enforcement is proactive and, for the most part, is not based on citizen complaints of code violation. (F-03, F-04, F-07, F-08, F-10, F-16, F-31)
- C-03.** The code enforcement department's community outreach program, while lately enhanced, does not seem to fully address citizen concerns. A substantial number of residents have expressed fear of retaliation by the City if they complain against the code enforcement officer to either the City or to the Sheriff's Department. (F-04, F-14, F-16, F-17, F-19, F-20)



- C-04.** The community development department is overly supportive of the code enforcement officer, despite the number of complaints offered by residents of various neighborhoods within the community. (F-17, F-24, F-28)
- C-05.** The code enforcement officer appears to present a "peace officer demeanor" in the conduct of his duties based on handcuffs in his possession and frequent calls for Sheriff's Department backup. (F-07, F-11, F-12, F-33)
- C-06.** Interviewed residents believe and assert that the code enforcement officer does not demonstrate sensitivity or effective customer service techniques when interacting with community residents and conflict resolution. (F-09, F-11, F-12, F-13, F-16, F-19)
- C-07.** The residents of the community interviewed by the Jury have minimal respect for the code enforcement department or its personnel. (F-01, F-09, F-13, F-16, F-17, F-19)
- C-08.** The code enforcement departments of the two other cities studied through ride-alongs have a more professional community relations approach to code enforcement violations. (F-22, F-23)

### **City Development Review Process**

- C-09.** The community development process is inconsistent, and the fee structure fluctuates depending on the nature of project review negotiations (i.e., a "whatever the traffic will bear" practice). (F-36, F-37, F-39, F-42, F-45, F-50, F-51, F-52, F-57)
- C-10.** The City's community development department has engaged in overreaching through annual and persistent soliciting from members of private project development companies that are subject to regulation and issuance of permits in connection with the City development process for cash contributions to the "Employee Appreciation Award" fund. (F-40, F-41)
- C-11.** The community development department administrative staff, with authority to make more than ministerial decisions with respect to improvement plan and project permit approval authority, received benefits from the "Employee Appreciation Award" fund. (F-40)
- C-12.** The City's persistent and aggressive solicitation of money and other gifts from persons and businesses doing business under the permit and approval authority of the City creates the appearance of impropriety regardless of the lawfulness of such activity. (F-40, F-41, F-45, F-53, F-54)
- C-13.** The City's arbitrary and aggressive setting and assessment of fees, sometimes apparently without reference to state statutory guidelines and strictures, is questionable practice and is not in the long-term interest of the City. (F-36, F-37, F-39, F-42, F-45, F-48 through F-52, F-55, F-57)
- C-14.** The use of economic duress is not appropriate or in the best long-term interest of the City when it is used to extract inordinately large fees and exactions. (F-36, F-39, F-45, F-48 through F-54, F-56, F-57)

- C-15.** The City is not developer friendly. (F-36 through F-42, F-45, F-48 through F-55, F-60)

## **Recommendations**

- R-01.** The City code compliance department continue its efforts to improve its level of community outreach to residents through community meetings, improved communication, and a sincere effort to promote cooperation and fairness in addressing code enforcement violations.
- R-02.** The City, in adhering to the above recommendation, adopt and follow the ethics and professional conduct outlined in the rules and procedures advocated by the Statewide California Association of Code Enforcement Officials, Inc.
- R-03.** The City modify the appeal process concerning code enforcement violations to enhance the ability of residents to have their cases resolved in a friendly and timely manner with a guarantee that they are provided due process options, including unbiased hearing officers and decision makers.
- R-04.** In connection with R-03, the City institute a mediation process for citizens complaining of code enforcement abuse or abuses that utilizes mediators not under the control or influence of the City manager or any City staff and who files his or her report through the City council for appropriate action by the City manager.
- R-05.** City council become more personally active in assuring that City staff, including the City manager, adheres to the spirit as well as the letter of City ordinances.
- R-06.** The City institute a periodic sensitivity training program for all code enforcement personnel as well as other staff who interface with the citizenry.
- R-07.** The City provide for an additional code enforcement officer when the budget permits in order to address the rapid population growth within the City.
- R-08.** The City not permit the persistent and aggressive solicitation of money and gifts from anyone and require that it be made clear to everyone that when solicitations are made giving is on a voluntary basis and that no repercussions will follow a failure to give.

## **Responses**

### **Responses Required From:**

Moorpark City Council (R-01 through R-08)  
Mayor of the City of Moorpark (R-05, R-08)