



MOORPARK

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August 12, 2004

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AUG 24 2004
VENTURA COUNTY GRAND JURY

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VENTURA COUNTY SUPERIOR COURT

AUG 13 2004

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

OFFICE OF THE
PRESIDING JUDGE

Subject: Response to 2003-2004 Grand Jury Report entitled, Moorpark Excessively Aggressive Code Enforcement and Development Process

Dear Honorable Judge Clark:

Moorpark is an attractive, well maintained city, where crime is low, the quality of development high, and compliance with development standards and the Municipal Code is maintained. Development costs are not a financial burden upon its citizens, because the City requires each development project to pay its own way. Over the last year, Moorpark's entitlement processes have been revised and streamlined, and with the hiring of the City's first in-house City Engineer, the post entitlement process is being refined and adjusted to reduce processing time and increase customer satisfaction.

In some cases, the Grand Jury's words and statements in its Report, without supporting documentation such as actual numbers of persons interviewed, make it difficult for the City to determine the extent of the stated concerns. Despite this situation, we are providing you information about recently implemented activities in response to the Grand Jury conclusions and recommendations.

The above referenced Grand Jury Report contains thirty-five findings and eight conclusions relative to Moorpark Code Enforcement Practices; and twenty-two findings and eight conclusions relative to Moorpark Development Review Process. The report concludes with eight recommendations. The Conclusions of the Report incorporate by reference the Grand Jury's Findings; therefore, our responses are to the Conclusions and Recommendations.

Over the course of the last year, the City has made a number of significant improvements to its code enforcement program. Those improvements are addressed in our responses and summarized at the conclusion of this letter.

Conclusions:

City Enforcement Practices

Conclusions C-07 and C-08 do not require our response except to indicate that the City will continue to improve our community outreach efforts for Code Compliance. The City believes the Conclusions reached by the Grand Jury with respect to items C-01 through C-06 are incorrect, and responds as follows:

“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 -13, F-16, F-19, F33)”

Response: It is the City’s responsibility to ensure that residents and businesses comply with the provisions of the Municipal Code. The purpose of the Code Compliance Program is to investigate reported and observed violations of the Municipal Code. Achieving compliance with the Municipal Code requires patience, understanding and persistence. It requires following up to make sure compliance has been met and maintained. It requires efforts by the community, neighborhood associations, businesses, and City staff working together to keep Moorpark a community where crime is low, the quality of development is high, and compliance with development standards and the Municipal Code is maintained.

On occasion, in the performance of his/her duties, the Code Compliance Officer has requested assistance from Sheriff Department personnel. Over the past year, however this practice has been revised to require prior approval from the Community Development Director. In 2003, the Code Compliance Officer requested assistance of the Sheriff Department personnel on three (3) occasions. Sheriff Department personnel requested Code Compliance Officer assistance on three (3) other occasions in 2003.

“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, F31)”

Response: Part of the Code Compliance Officer’s job is to observe and report on code violations. However, the bulk of the Code Compliance work, 62% of the cases in 2003, was generated by citizen complaint. A primary goal of the Code Compliance Work Program is compliance with the Code, and we expect fewer violations if the public is more knowledgeable about Code requirements.

“C-03 The code enforcement department’s community outreach program while lately enhanced, does not seem to fully address citizens 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-4, F-14, F-16, F-17, F-19, F-20)”

Response: Though the Grand Jury Report does not indicate the number of concerned citizens or form of alleged retaliation, the City will continue its efforts to improve its Code Compliance activities. The City Council adopted a revised Code Compliance Work Program in February 2004 to improve customer service, enhance the focus on compliance with the Code, and to increase citizen information about compliance with the Municipal Code. As a result, Code Enforcement is now Code Compliance, the Code Compliance Officer’s uniform has been changed to a polo shirt with a City logo and sport slacks, the Code Compliance Officer no longer wears a utility belt or displays a badge, but wears a photo identification clipped to his shirt. Investigations are now conducted with less contact with the public.

The initial contact is generally done by written correspondence advising the responsible party of the alleged violation. If personal contact is made, the Code Compliance Officer is now required to provide the responsible party with copies of the pertinent sections of the Municipal Code. The Municipal Code and Code Compliance brochures are available at all times at the public counter in City Hall and at the Building and Safety and Engineering public counter. We have assigned responsibility to one person at each location to ensure that the brochures are always available in the display cases. We will also minimize personal contact and redirect compliance efforts to a supervisor when the case involves a party previously subject to a code compliance case.

“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, F28)”

Response: The Community Development Department has processed 322 cases in 2003 with 89 percent of the cases resulting in voluntary compliance. Only 19 percent of the cases required the office conference process to achieve compliance. Only 2 percent of the cases required court action to achieve compliance. Each complaint is taken seriously and investigated. Citizen complaints involving an employee are investigated in compliance with the City’s procedures, and these investigations are mindful of the rights of the affected employee.

“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)”

Response: As of February 2004, the Code Compliance Officer's uniform has been changed to a polo shirt with a City logo and casual slacks. There is no longer a badge or a utility belt, and handcuffs have never been carried by a City Code Officer. The Code Compliance Officer is responsible for obtaining compliance from owners who do not maintain their property, have overcrowding conditions, convert garages into living quarters without proper permits, and other violations of the Municipal Code. In 2003, among the 322 cases, there were 120 property maintenance cases, 34 overcrowding cases, 35 building code violations, and 11 illegal grading cases. The remaining 122 cases involved a variety of violations including too many animals, graffiti, and illegal signs.

From time to time, Sheriff Department personnel have advised the Code Compliance Officer that he/she should not visit certain properties unless accompanied by them due to prior criminal incidents involving those properties. Other times when the Code Compliance Officer is concerned for his/her safety, Sheriff Department personnel are requested to accompany him/her on a site investigation. Over the past year, this practice was revised to require prior approval of the Community Development Director. Of the 322 cases in 2003, the Code Compliance Officer requested assistance on only three (3) occasions.

“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)”

Response: It would be helpful to the City in its efforts to improve Code Compliance if the Grand Jury Report had indicated how many residents were interviewed. Moorpark has over 34,500 residents. All City employees attend Customer Service training on a regular basis. It is a stated goal of the recently adopted Code Compliance Work Program to promote Code compliance through information. It is the City's belief that when residents and businesses are aware of Code requirements, there will be fewer violations.

A number of changes to the Code Compliance Program have been implemented including, but not limited to, changing the emphasis of the Program from “enforcement” to “compliance,” creating additional informational brochures and including them in correspondence, reduced public contact by the Officer in dealing with alleged violators, and more involvement of the Code Compliance Supervisor and in some cases, the Community Development Director. These changes and more are detailed in the Recommendations section of this letter.

City Development Review Process

The City believes the Conclusions C-09 through C-14 reached by the Jury are incorrect. Our reasons are as follows:

“C-09 The community development process is inconsistent, and the fee structure fluctuates depending upon 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)”

And

“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)”

Response: All fees and deposits are established in accordance with state law and statutory guidelines. The fees and deposits are adopted through a public hearing process and are based upon a flat fee and deposit based program. The City of Moorpark recovers the cost for development services through a deposit based program. The practice is used in many cities throughout California. In establishing a park fee in accordance with the state Quimby Act, the City adopted the County ordinance shortly after its incorporation.

Additionally, the state authorizes cities and counties to enter into development agreements with a developer. The development agreement secures the developer's project approvals and allows cities and counties to negotiate certain fees unique to that new development. Development agreements generally occur with larger projects, and in Moorpark, particularly for large residential projects. Each development agreement in Moorpark has been treated in substantially the same manner securing project approval for the developer and including development fees and other considerations for the City. As a result, these development agreements are generally very similar.

In an effort to streamline the development process, the first assignment for the newly hired in-house City Engineer in December 2003 was to review the engineering plan check process. His task was to insure that the City was providing effective and efficient service while protecting the public health and safety. His objectives were to reduce the cost and time required for processing without sacrificing the thoroughness and accuracy needed to protect the City’s future public improvements built as part of the development. The City is satisfied with his progress to date and expects continued improvements on this matter.

“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)”

And

“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)”

And

“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)”

Response: The City Council has stopped the practice of requesting community support for its Employee Recognition Luncheon and has approved City funding for the continuation of an annual Employee Recognition Luncheon. The City Council will consider an amendment to its existing policies to specifically address this matter and the potential for an appearance of impropriety. The City’s long-standing practice has been that individual employees do not accept gifts of any kind. All gifts received, such as during the holiday season, are turned over to Human Resources Division staff and are then made available to all staff.

“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)”

Response: The City has not used economic duress in its collection of fees. All fees have been established in accordance with state law in connection with standard processing of entitlements or bilaterally negotiated development agreements. In fact, in several cases, the City has taken action to allow occupancy of residential units and businesses with appropriate sureties without all conditions of approval having been accomplished.

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

Response: This statement does require a response, but it should be noted that the City of Moorpark has many of the major builders in Southern California constructing homes and commercial developments. The City requires that developers construct well

designed projects to high standards. It requires conditions of approval for all projects and expects developers to fully comply with those conditions.

Recommendations:

In response to the Grand Jury's eight Recommendations, the City concurs with Recommendations 1 and 6 and will work to implement those recommendations in a manner consistent with City policy and good management practices.

In regard to Recommendation 7, it did not appear that there were any findings related to the workload of the Code Compliance Officer, i.e. regarding the number or complexity of cases handled. City statistics indicate an average of about 300 new cases per year with over 90% of all cases resolved within a year of opening a case. We do not concur that an additional position is warranted at this time, but will continue to monitor the number of new code cases and the time required for compliance.

With respect to Recommendation 8, the City disagrees it inappropriately received money and gifts from anyone for any purpose. However, as indicated above, the City has discontinued the practice of soliciting funds for its employee recognition event. On May 26, 2004, the City Council considered its 2004-2005 Fiscal Year Budget and included only City funds for this event. This Budget was subsequently adopted on June 16, 2004. The City already has a practice in place prohibiting any employee from directly accepting any gift. The City Council will consider an amendment to its existing policies to specifically address this matter.

With respect to Recommendation 2 regarding adoption of the "Code of Ethics and Professional Conduct", the City will review and consider such adoption for its Code Compliance Division personnel.

As to Recommendations 3, 4, and 5, the City thanks the Grand Jury for its recommendation, but respectfully declines to implement any of these recommendations; however, the City has taken the following actions:

1. Changed the emphasis in the work program from code enforcement to code compliance.
2. Created a brochure for the public explaining the process followed if compliance is not achieved, including an explanation of the office conference process and its purpose. It includes an explanation of what could occur if compliance is not achieved after an office conference. Use of this brochure should also help to reduce the need for personal contact.
3. Started including an informational brochure regarding Code Compliance along with the first letter sent to the person responsible for the alleged code violation.

This process assists in informing the responsible person on the purpose of Code Compliance.

4. Continued to implement the new Code Compliance Program adopted by the City Council in February 2004. This Program was created as a result of a continuing effort to improve customer service and in part in response to the 2003 Grand Jury Report. Key elements of this program that have been implemented and will continue to be fine-tuned include the following:
 - a. New, more casual, less police-like uniform implemented in April 2004.
 - b. Case files containing the complaint and investigation material are no longer displayed or carried to meetings with alleged violators.
 - c. The Code Supervisor is taking a more active role in cases when there is an alleged repeat or new violation with a person who was the subject of a previous case. The Supervisor also personally handles new cases where the alleged violator's prior case had proceeded to an office conference or court appearance.
 - d. The Code Officer contact with violators has been minimized, when feasible. This is done through using photographic evidence and through sending letters, first, instead of a personal contact.
 - e. Re-establishment of the advisory letter program where an advisory letter noting common violations of the Moorpark Municipal Code is sent regularly to Homeowner Associations (HOAs) and to all residents who do not reside in an HOA. This notification is sent either as a letter, or through an insert in a billing statement, or as part of the City's Quarterly Newsletter.
 - f. Initiated and publicized a direct telephone line (805-517-6297) for complaints so that complainants can file a complaint, remain anonymous, and report violations 24 hours a day, 7 days a week.

We appreciate the opportunity to respond to the Grand Jury's Report and remain confident our responses demonstrate significant improvement in the City's Code Compliance and Development Review processes.

Sincerely,



Steven Kueny
City Manager

cc: Honorable City Council
Joseph Montes, City Attorney