



CITY OF
VENTURA

City Council

Mike Tracy, Mayor
Cheryl Heitmann, Deputy Mayor
Neal Andrews, Councilmember
Brian Brennan, Councilmember
James L. Monahan, Councilmember
Carl E. Morehouse, Councilmember
Christy Weir, Councilmember

August 13, 2012

The Honorable Vincent J. O'Neill, Jr.
Presiding Judge of the Superior Court
County of Ventura
800 S. Victoria Avenue
Ventura CA 93009

RE: Grand Jury Report City of Ventura Code Enforcement

Dear Judge O'Neill:

Enclosed, please find our Response Form to the Grand Jury report, titled: City of Ventura Code Enforcement.

On August 6, 2012 the Ventura City Council approved this Grand Jury report response and authorized the Mayor to make this reply. We appreciate the Grand Jury's efforts in looking into this important matter.

Sincerely,

Mike Tracy
Mayor

✓ C: Foreman, Ventura County Grand Jury

Enclosure

RECEIVED

AUG 16 2012

VENTURA COUNTY
GRAND JURY

Response to Grand Jury Report Form

Report Title: City of Ventura Code Enforcement

Report Date: June 19, 2012

Response Prepared By: Rick Cole, Ventura City Manager on behalf of the Ventura City Council

FINDINGS

We agree with the findings numbered: 02, 10, 13, 15

We disagree wholly or partially with the findings numbered: 01, 03, 04, 05, 06, 07, 08, 09, 11, 12, 14, 16, 17.

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefore.)

RECOMMENDATIONS

Recommendations numbered 02 have been implemented.

(Attach a timeframe for the implementation.)

Recommendations numbered 04, 05, (bullet 1) have not yet been implemented, but will be implemented in the future.

(Attach a timeframe for the implementation.)

Recommendations numbered 05 (bullet 4) require further analysis.

(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)

Recommendations numbered 01, 03, 06, 07, 08, 05 (bullets 2,3,5,6) will not be implemented because they are not warranted or are not reasonable.

(Attach an explanation.)

Date: August 6, 2012

Signed: _____


MIKE TRACY, MAYOR

Number of pages attached: 8

RESPONSE TO GRAND JURY FINDINGS

1. CE administration requires code enforcement training and experience. (FA01-06, 10, 11, 14, 17-22, 25, 27, 28, 32-44)

City Response:

The City agrees with Facts: 2, 4, 5, 14, 18, 19, 21, 22, 25, 28, 39 - 41. The City does not agree with the remaining facts listed in support of this finding. Consequently, it is the City's position that Code Enforcement administration and staff training has been satisfactory or better. The City's Code Enforcement Inspectors participate in various certification and training programs such as:

- The California Association of Code Enforcement Officers (CACEO) Code Enforcement Inspector certification program
- Fire Code Enforcement
- Crime Free Multi-Housing
- Penal Code Section 832

Additionally, Code Enforcement administration and staff understand, honor, and respect the rights of their customers. Complaints of abuse or poor customer service are taken seriously, investigated and resolved with changed procedures, staff counseling, additional training and or staff discipline as appropriate.

2. The City has a large number of older dwellings and second dwelling units that have unpermitted work. (FA-34)

City Response:

Agreed

3. Many of the second units provide inexpensive (low-income) housing and rentals. (FA-34)

City Response:

While the City can find no data to support Fact 34, this has been an assumption of both the City and Safe Housing Collaborative. The City is obligated by law to apply code enforcement neutrally without respect to the income levels of the occupants of properties.

4. "The 2nd Unit Dwelling Amnesty Permit Program" reduces permit fees and addresses zoning issue requirements for those who can afford impact fees and building construction upgrades to comply with the program. (FA-07, 08)

City Response:

The City's "2nd Dwelling Unit Amnesty Permit Program" grants code enforcement amnesty to all who make application for this program – without regard for the status of their application. No construction code upgrades are required other than the installation of smoke and carbon monoxide detectors as required by State law for all rental dwelling units. Impact fees are reduced in accordance with the impact fee amount in effect at the time the 2nd unit was placed into initial service. This has

resulted in an average combined permit and impact fee amount of less than \$3,000 per permit approved for issuance.

5. Applicants not accepted into the Amnesty Program risk citations, higher fees, and possible demolition of their second dwelling units. (FA-08)

City Response:

This would be true whether the City had an Amnesty Program or not – in fact it is the primary reason for having one. All “2nd Dwelling Unit Amnesty Permit” applications are accepted and are granted amnesty from City initiated Orders and Administrative Citations. Those that apply and do not complete the process (except for active code enforcement cases) are not tracked for future enforcement, but risk being reported and then must resort to compliance with current standards. The City does not have a policy of undertaking enforcement against properties that are not accepted into the amnesty program.

6. Many property owners fear CE and the cost of permits, fees, and construction costs. (FA-01, 02, 06, 08-14, 18, 19, 21, 25-27, 29, 30, 3234, 36-44)

City Response:

The City agrees with the supporting Facts: 2, 12, 14, 18, 19, 21, 25, 29, 39-41. The City does not agree with remaining supporting facts. More than 150 surveys received from Code Enforcement customers during 2009 and 2010 show that 96% of the customers surveyed are “Satisfied” or “Very Satisfied” with the Accountability, Accessibility and Attitude of Code Enforcement staff. While it is not surprising that “many” property owners “fear CE and the cost of permits, fees and construction costs” those who have distributed anonymous and/or misleading information castigating the City’s CE efforts must share some of this responsibility. An active and ongoing “watchdog” effort has inevitably stoked unwarranted fear amongst some residents of the City. The City is interested in learning the percentage of the more than 10,000 reporting parties and customers from 2007 to 2011 that were surveyed by the Grand Jury in order to make this finding, i.e., what is the factual basis for the term “many”.

7. CE and the City have shown preferential treatment in code enforcement to favored citizens. (FA-11)

City Response:

The City does not agree with the supporting fact in this finding. City records show that in 2007, a VCC member asked Community Development if their second unit was legal and safe. An inspection was conducted, corrections issued and repairs were made in accordance with the permit issued for those repairs. The CBO reviewed the permit records and found a report that called the subject second unit another residence. The CBO determined, at that time, that the life-safety repairs and public record supported the legal use of the second unit. In 2011, a review of the CBO’s decision was made. During the review of the CBO’s decision, a Planning case file was discovered in the Planning archives. The Planning case file specifically stated that the subject second

unit was legally permitted as only an artist studio. The VCC member was issued a Notice and Order to address the unpermitted use of an artist studio as a second unit. This is the same process employed by Building & Safety staff for all other customers in similar situations. The Grand Jury presents no evidence other than innuendo to make this broad charge.

8. None of the levels of the City appellate process is by an independent third party and can become expensive to the property owner. (FA-27)

City Response:

Decisions of the CBO or Fire Marshal can be appealed to an independent third party Local Appeals Board as stated in Fact 27 of this report. It is important to note that Fact 27 of this report incorrectly combines the Local Appeals Board appeals process with the City's Civil Penalty's appeals hearing process. Prior to June of 2012, there was no further appeal process other than civil action in Superior Court. As of June 2012, Local Appeals Board decisions can be appealed to City Council.

9. The City holds the property owner responsible for the burden of proof for the existence of permits. (FA-02-05)

City Response:

While the City agrees with supporting Facts 2, 4 and 5, it does not agree with Fact 3. The City knows of no governmental agency with comprehensive building records that assumes that work is permitted unless it can be definitely proven otherwise. The City holds property owners accountable for construction work and changes of building use for which a permit was required and was not obtained. The City maintains over a million records and relies on those records as evidence of permitted work.

10. The City holds the current property owners responsible for any and all prior work requiring permits. (FA-02)

City Response:

Agreed. In 2011, the City adopted local regulations requiring real property buyer and sellers be provided all building permits, planning files, and active code enforcement records for the property to be sold. Acknowledgment of receipt of those records is returned to the City for future reference. These 2011 regulations assist buyers with the understanding of the legality of the structures and uses on the property they are investing in.

11. CE has been aggressive with property owners in personal contacts, paperwork, documents, and enforcement tactics. (FA-01-05, 14, 18-22, 25-34, 36-44)

City Response:

The City does not agree with supporting Facts 1, 3, 20, 26, 27, 30, 33, 34, 36-38, 42-44. Code Enforcement staff are focused and assertive while respecting the rights of the customers they serve and are compassionate to any potentially displaced residents. There are obviously specific cases of citizen complaints investigated by the

Grand Jury, but again, the timing and number of such cases is not disclosed in the report, nor was there any effort to "get the other side of the story" from the City on those cases.

12. CE is more aggressive and less helpful than a comparison city in the County. (FA-24)

City Response:

The City and the public have no basis for evaluating the validity of the "comparison city" and the depth of rigorous comparison actually performed by the volunteer Grand Jury that is the basis for the unsubstantiated Fact 24 of this report. The City does work with violating parties as long as the party in violation communicates with the City and seeks reasonable accommodations necessary to assist with a timely abatement.

13. The VCC has raised fees for budgetary reasons. (FA-12, 13, 25, 26, 33, 38)

City Response:

The City agrees with supporting Facts 12 and 25 because it is long-standing City Council policy that we fully recover the costs of fee-based services from users of those services under applicable legal standards rather than burden general taxpayers with subsidizing those costs. This is sound budgetary practice that might be justly criticized if the City didn't take this approach. As a general philosophy, most citizens would agree that those who maintain their properties and obtain legally required permits should not subsidize those who don't. Of course, there are reasonable objections and exceptions to such a general rule (such as parties who are not directly responsible for code deficiencies or who are economically disadvantaged.) But any assertion that the City has used Code Enforcement to generate revenue for other services is simply false. The City does not agree with the remaining supporting "Facts." At no time have fees exceeded the reasonable cost of providing the service required.

14. When the VCC approved shifting B&S permit fees to a cost reimbursable system, it resulted in higher fees. (FA-12, 13, 20, 25, 26, 33, 38)

City Response:

The City agrees with supporting Facts 12 and 25. The City does not agree with the remaining supporting facts. It is a fact that moving from a "Valuation Based Fee" system to an "Hourly Rate Based Fee" system increased some fees, however, it reduced some fees and left others relatively unchanged. The new system is a more accurate reflection of the actual costs. At no time have fees exceeded the reasonable cost of providing the service required.

15. The City's use of the term *substandard* is very broad, allowing the City to apply it to issues ranging from life-safety to nuisances. (FA-09, 18, 22, 28, 30, 34)

City Response:

Agreed

16. Inconsistent and confusing information is provided by the CE to property owners. (FA-06, 09, 10, 22, 28, 30, 42)

City Response:

The City agrees with supporting Facts 22 and 28. The City does not agree with the remaining supporting facts. Since 2007, the City has had policies and systems in place that require the use of standardized violation descriptions, abatement timeframes and remedy options, thus providing consistent and clear violation and abatement communications. Again, it is difficult to assess these allegations without an understanding of the number and nature of the complaints reviewed by the Grand Jury.

17. The VCC approved retaining the developer permit fees in excess of reimbursable costs. Though informed that collecting and retaining more than the costs to perform a service may be contrary to law, the VCC failed to lower these fee rates. (FA-36)

City Response:

The City does not agree with supporting fact 36. VCC has always confirmed that developer permit fees in Building & Safety have not exceeded the cost of providing only construction permit related services. At the fee or service level, VCC has adopted fees that move closer to the lowest cost of service estimates. When these fee changes are more than what City Council believes would be supportable by the community, VCC has sought to begin correcting the fee/service disparity immediately by employing a multi-year transition strategy. Lastly, Code Enforcement has separate budgeting and accounting from construction permits.

RESPONSE TO GRAND JURY RECOMMENDATIONS

1. That VCC provide additional management oversight of the Code Enforcement Group along with requisite code enforcement and legal training. (FI 01, 04-12, 15, 16)

City Response:

The City Council has already devoted countless hours of direct and indirect analysis and oversight of this function during the past five years and feels that the following provide more than adequate management oversight of Code Enforcement:

- Specific Council consideration of Code Enforcement Policies on a regular basis, including the convening of a "Safe Housing Collaborative" and extensive consideration of its deliberations and recommendations.
- Continuing City Council review and discussion of Code Enforcement operations 2-3 times each year, during official City Council meetings.
- Weekly opportunities for discussion between the Community Development Director, the City Manager and City Attorney on Code Enforcement matters.
- Weekly Department Director, Division Manager, Supervisor and Staff discussions of Code Enforcement operations.

2. That VCC implement policies and practices to instill public confidence in the Amnesty Program. (FI-04, 05)

City Response:

The City has taken the following steps in dispelling the false propaganda distributed by special interest groups:

- Attended and presented the Amnesty program to every Community Council in the City.
- Mailed out factual informational letters to more than 1,000 licensed contractors.
- Presented the program at City Farmer's Market events in June.
- Facilitated training on the program for more than 40 interested contractors.
- Is preparing a short cable TV informational piece that will air in October 2012.

3. That VCC revise City and code enforcement policies, procedures, and practices relating to the reality, or appearance, of preferential treatment. (FI-07)

City Response:

As stated in the "Response to Grand Jury Findings" section, the City finds no basis for Finding 7.

4. That VCC redefine "substandard" as life safety issues in the code enforcement policies. (FI-15, 16)

City Response:

The City agrees that the traditional use of the work "substandard" in code enforcement notices is too general. In light of this and the upcoming adoption of the 2013 California Building Standards Codes in Fall of 2013, City staff will recommend that the City's Property Maintenance Code attempt to differentiate between "life-safety", "nuisance", and "administrative" code violations.

5 That VCC rewrite policies, procedures and practices with the purpose of reducing conflict between Code Enforcement and property owners. This should include:

City Response:

- Editing forms that appear more threatening than informative prior to a determination of non-compliance (FI-11, 15, 16)

The City agrees and City Council has endorsed this approach with ongoing implementation by staff.

- Describing violations and remedy options with reasonable detail and clarity (FI-11, 15, 16)

This has been in place since 2007.

- Developing a training strategy for Code Enforcement with the intent to assist owners through the process of making their properties safe (FI-11, 12, 15, 16)

The City has been and continues to do this.

- Providing equitable relief with respect to permit fees for successive owners who failed to discover prior code violations through their due diligence (FI-09, 10)

This will be discussed in January 2013 during the next City User Fees Resolution City Council public hearing.

- Retaining an inventory of low-income dwellings in Ventura for state reporting requirements (FI-02-06, 10-16)

This is already done and has been confirmed by the State of California via the City's, State approved, "Housing Element".

- Creating an independent third-party appeals process focusing on property safety issues and fairness (FI-08)

This has been in place for decades.

6. That VCC refrain from using non-safety code enforcement matters to raise revenue. (FI-04, 06, 13, 15)

City Response:

The City will continue to recover the cost of enforcing City standards where legally and ethically appropriate. At no time has the City used code enforcement to raise revenue.

7. That VCC return excessive fee rates previously collected from developers and lower these fee rates to a level compliant with the law. (FI-17)

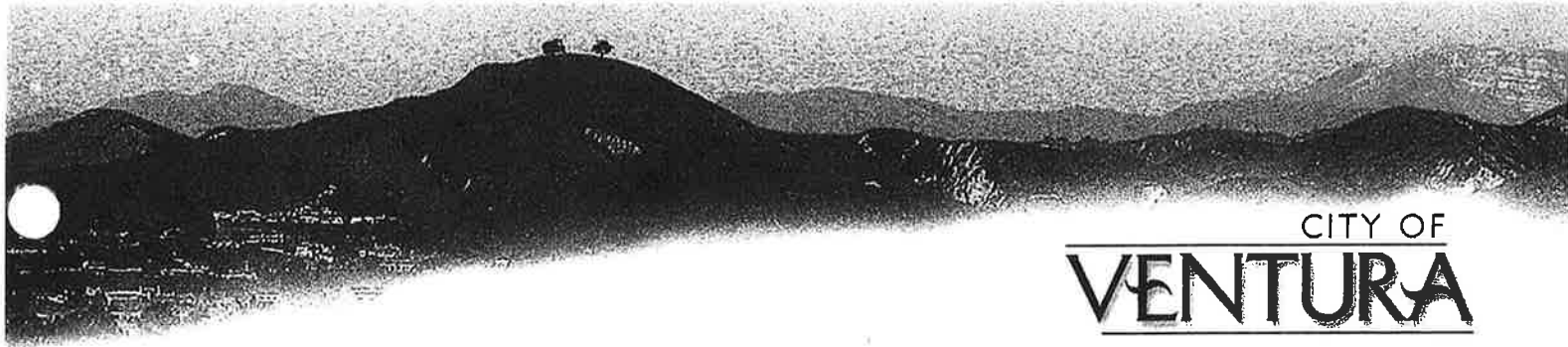
City Response:

At no time has the City collected more than the reasonable, estimated cost of services provided through the code enforcement program. Accordingly there is no legal basis for a refund.

8. That VCC place the burden of maintaining building and safety and code enforcement records or documents on the City, in compliance with current law. (FI-09)

City Response:

This has been, and remains, the current policy of City Code Enforcement.



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Mike Tracy, Mayor
Cheryl Heitmann, Deputy Mayor
Neal Andrews, Councilmember
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Carl E. Morehouse, Councilmember
Christy Weir, Councilmember

October 22, 2012

The Honorable Vincent J. O'Neill, Jr.
Presiding Judge of the Superior Court
County of Ventura
800 South Victoria Avenue
Ventura CA 93009

Dear Judge O'Neill:

Following recent discussions with members of the Grand Jury sub-committee on Code Enforcement, this letter is being submitted regarding the eight recommendations contained in the 2011-12 Grand Jury Report.

The City is unequivocally committed to the continuous improvement of all our policies, procedures, and training programs. Complaints are taken seriously and changes are made with the goal of compassionately keeping our community a safe and clean place in which to live and work.

Response to Grand Jury Recommendations:

1. Provide additional management oversight of the Code Enforcement Group along with requisite code enforcement and legal training.

Over the past five years, the City believes it has provided considerable oversight and analysis of this important function but agrees to continue reviewing current methods and further explore other means of improving the code enforcement program and related staff training.

2. Implement policies and practices to instill public confidence in the Amnesty Program.

In an effort to explain and clarify the Amnesty Program, the City has: (a.) Conducted in-person presentations to every Community Council in the City; (b.) Mailed hundreds of informational letters to licensed contractors who provide services within the City; (c.) Conducted public information outreach at the City Farmers' Market during the month of June; (d.) Facilitated training for 40+ interested contractors; (e.) Prepared a television informational short that will be aired over cable TV this Fall; (f.) Approved a one-year extension of the Amnesty Program and

asked staff to consider additional outreach methods to inform property owners about the program, and (g.) Designed program materials that explain a simple step-by-step process with a pre-initiation check-list to ensure those considering the program understand up front what they will be going through and the likelihood of a successful outcome.

3. Revise City and code enforcement policies, procedures, and practices relating to the reality or appearance of preferential treatment.

The City recognizes the importance of not only being fair and impartial in the administration of the law but to be perceived as such. We will review and modify our procedures, methods and practices to promote both the perception of fairness as well as the reality in all that we do.

4. Redefine “substandard” as life safety issues in the code enforcement policies.

The City agrees that the State Health and Safety Code (Section 17920.3) definition of the word “substandard” in this State mandated code enforcement process is general. The California Building Standards Code is under review for re-adoption next year. During this process, the City staff will propose local amendments to more clearly differentiate between “life-safety”, “nuisance” and “administrative” violations that more clearly describe the urgency and severity of conditions being cited on a property.

5. Rewrite policies, procedure, and practices with the purposes of reducing conflict between Code enforcement and property owners.

The City Council agrees and has directed staff to review, edit, and revise information and forms used prior to the determination of “non-compliance” in order to remove language that is perceived to be threatening in nature.

The City believes that Code violations and remedy options have been described in reasonable detail and clarity since 2007, but agrees to be vigilant and emphasize this issue in both the training and supervision of the program.

The City has been and will continue to emphasize the service aspect of assisting owners through the process of making their property safe and clean.

The issue of equitable relief of fees related to undiscovered code violations by successive owners will be discussed during the City Council public hearing on user fees in January 2013.

The City agrees with the Grand Jury as to the importance of keeping an inventory of low income dwellings in Ventura and is doing so. The State of California has confirmed this through its approval of the City’s “Housing Element”.

The City supports the third-party appeals process and has one in place. However, it appears that the issues of concern are more related to the cost of the process and the authority of the Local Appeals Board. The City is examining the efficiency and effectiveness of the appeals process with the goal of keeping fees to a minimum.

Fairness in the appeal process is a focus of the City, but there are legal limits on the authority and remedies available where equal protection under the law is involved. In October 2012, the Local Appeals Board was given a detailed orientation concerning its role, the laws governing deliberations and decisions, as well as the procedures by which they conduct themselves.

6. Refrain from using non-safety code enforcement matters to raise revenue.

The City does not and legally cannot use code enforcement to "raise revenue". It may only recover the cost of providing the function, activity or service involved. As a matter of public policy, most communities including Ventura have adopted Codes that include non-safety code enforcement. The City agrees that code enforcement should not be used as an excuse to raise revenue but will continue to recover its cost only where legally and ethically appropriate.

7. Return excessive fee rates previously collected from developers and lower these fee rates to a level compliant with the law.

The City believes its fee rates are in compliance with the law that limits them to no more than actual cost of enforcement. If excessive fees were to be collected, the City would refund them and correct the cause of any over charge.

8. Place the burden of maintaining building safety and code enforcement records or documents on the City, in compliance with current law.

The City believes it has and continues to take responsibility for maintaining building and safety and code enforcement records under the law. However, where the violation being alleged involves work performed without permit, there may not be any record to maintain. Recognizing that it is difficult, if not impossible, to prove a negative (absence of evidence that a permit was issued), the totality of the circumstance is taken into account by the City when placing the burden of proof for an alleged violation.

I appreciate the Grand Jury's efforts to improve code enforcement in the City of Ventura and the opportunity to respond.

Sincerely,



John F. Johnston
Interim City Manager