

Agenda Report

DATE: May 11, 1998

TO: CITY COUNCIL

FROM: CITY MANAGER

SUBJECT: **RECOMMENDATION FOR ESTABLISHING CIVIL ADMINISTRATIVE PENALTIES FOR MUNICIPAL CODE VIOLATIONS RELATED TO PROPERTY MAINTENANCE AND LAND USE VIOLATIONS AS AN ALTERNATIVE TO PROSECUTING SUCH VIOLATIONS**

RECOMMENDATION

It is recommended that the City Council:

- A. Direct the City Attorney to amend Title 2 of the PMC establishing administrative penalties for municipal code violations, such as property maintenance, land use, and permit violations, as an alternative to the prosecution process currently used.
- B. To direct staff to amend the General Fee Schedule to include the administrative fines and penalties for the municipal code violations attached to this report at \$100.00 for each violation.

This agenda report represents an additional component of the overall Comprehensive City-wide Code Compliance Strategy. It is important to note that the goal for Code Enforcement is to attain compliance, rather than fine people. This is by no means a panacea for all code violations. Rather, it is but one additional tool available to the inspector so that she/he can attain compliance in an orderly manner.

BACKGROUND

Previously, with the exception of parking violations for which cities had statutory authority to process violations administratively, the law was unclear as to whether cities could enact administrative penalties for violations of their laws. Case and statutory authority suggested that, with few exceptions, violations of city ordinances could be processed only as criminal prosecutions, either as infractions or misdemeanors. Effective January 1 1996, Section 53069.4 was added to the Government Code and it specifically authorized cities to make any violation of any ordinance punishable by administrative fine or penalty instead of criminal prosecution.

The benefits of such a system are threefold:

1. Administrative penalties would substantially reduce the length of time and legal expense which are inherent in criminal cases. For less serious violations, the City may be able to obtain compliance more quickly and at less cost.
2. Having authority to impose administrative fines will give a higher level of compliance without having to issue citations, or pursue further action against the violator. People usually respond quickly to a first “notice to abate” when they know that the City has the ability to gain compliance through a fine process.
3. The City, rather than the County, will be able to keep all proceeds from the fines imposed through this process.

CURRENT ENFORCEMENT PROCEDURE

Pasadena’s current criminal enforcement process, as it is designed, can allow a recalcitrant property owner more than 6 months to bring his/her property in compliance with local ordinances. If the violations are numerous, it can have a tremendous negative impact, aesthetically and economically, on the neighborhood as a whole.

Following is the current code enforcement process and timeline for criminal cases:

<u>PROCESS</u>	<u>TIME ELAPSED</u>
1. A code enforcement officer inspects said property to verify code violation(s). If complaint is valid, the code enforcement officer sends violator (most often the owner of the property) a “notice to abate” the violation within 30 days.	30 Days
2. If the owner does not comply within the 30 days, the code enforcement officer must then mail a final notice giving the violator 10 more days to abate the code violations.	10 Days
3. If the violation is not abated after the 10 days, the code enforcement officer prepares the case for presentation at a hearing before the City’s Code Enforcement Commission. Hearing scheduled and convened.	14 - 30 Days
4. If the Code Enforcement Commission rules in favor of the City, the violator is given an order to abate.	5 - 30 Days, depending on nature of problem.
5. If violations continue, the case is referred to the City	1 Day

- prosecutor for action.
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|---|-----------------|
| 6. Prosecutor files case with courts. | 14 Days |
| 7. If violator appears in court for arraignment, a plea is entered. Pretrial hearing, and trial are set. | 30 - 45 Days |
| 8. Trial convenes, Judge imposes sentence. Minor property maintenance items are given another 60 days maximum to bring to compliance. Other violations may receive more time. | 60 Days maximum |
- **Total Estimated Time for Compliance** **134 - 210 Days**

9. If violator does not appear for court hearing, an arrest warrant is issued. They then will have to arrest that person. If it is an absentee owner, the arrest is complicated because of law enforcement jurisdictional issues.

As is evident, a property can continue to add to blight in a neighborhood for well over 6 months, sometimes years, if the owner decides to dig his/her heels in and fight the system. Most of these ongoing problem properties are associated with absentee owners and slumlords, people who do not have a vested interest in the community.

The purpose of this ordinance is to substantially reduce the amount of time it takes to abate code violations. Based on information and data from the cities of Lynwood and Glendale, who currently have an administrative fine process, staff anticipates an 85-90 percent compliance rate within three days of receiving a notice to abate. The proposed ordinance provides a financial incentive for the recalcitrant property owner to correct the violations. Failure to correct the violations would place a financial burden on the owner and his/her property.

The new ordinance would set forth the administrative procedures, governing imposition, enforcement, collection and administrative review by the City. Once the City adopts the ordinance establishing administrative fines, any person who violates a code provision to which the fine applies would be required to pay the entire fine to the City, not to the court. Also, those violators would not face jail or probation: the administrative fine is the punishment. This process would eliminate court proceedings, including arraignments, pre-trial conferences, and trials.

Government Code Section 53069.4 also requires that before imposing an administrative fine for property maintenance, permit process or zoning violations that do not create an immediate danger to health or safety, the city must provide a reasonable period of time for a violator to remedy a "continuing violation."

ADMINISTRATIVE PENALTIES AND CITATIONS

It is important to note that the administrative penalty process has two components: 1) Administrative Penalties - Compliance Orders, and 2) Administrative Penalties - Citations. Each has its place depending on the nature of the violation, severity and frequency. Under this proposed ordinance, the Enforcement Official would be allowed to make the determination to use one or the other method based upon the nature of the violation, severity and frequency, subject to standards in the ordinance.

1. Administrative Penalties - Compliance Orders: This provides for administrative remedies for violations of the Code. Administrative penalties may be pursued in lieu of other legal remedy, criminal or civil, which may be pursued by the City to address any violations of the code.

Whenever an inspector determines that there exists a continuing violation of any provision of the Code, the Neighborhood Services Division Administrator may issue or cause to issue a written Compliance Order to any responsible person. The compliance order shall contain all of the following information:

- a) The date, location and approximate time of the violation.
- b) The City Code section violated and a description of how the section was violated.
- c) The action required to correct the violation and date by which such action must be taken. The date for compliance shall not be less than 30 days from the date the compliance order is served.
- d) The consequences of failing to correct the violation, including a description of the administrative hearing procedure and appeal process.
- e) The time period after which administrative penalties will begin to accrue if there is no compliance with the order.
- f) The amount of penalty that will be imposed if there is no compliance with the order.

2. Administrative Penalties - Citations: Any person whom a code enforcement official determines is responsible for causing or maintaining a violation of the Code may be issued an administrative citation. The citation shall contain the following information:

- a) The date, location and approximate time of the violation.
- b) The City Code section violated and a description of how the section was violated.
- c) The amount of the fine imposed for the violation, and the time within which and the place at which the fine shall be paid.
- d) An order prohibiting another occurrence of the code violation.
- e) A description of the administrative citation review process, including the time within which to contest the administrative citation and the place from which to obtain a Request for Hearing Form to contest the administrative citation.
- f) The name and signature of the citing Enforcement Official.

Of course there are strict procedures for serving the Compliance Order and administrative citation, an administrative hearing process with a hearing officer, and an appeal process with an administrative hearing board (Code Enforcement Commission).

APPEAL RIGHTS

The statute also provides a short period for appealing the city's administrative decision. Within 20 days after the final administrative decision is served on the violator, a person contesting that decision may seek review by filing an appeal in the Municipal Court (filing fee paid to the court). If no appeal is filed within the 20 days, the City's decision is deemed confirmed.

If the court rules in favor of the City, and the fine still has not been paid, the City may proceed to collect the fine pursuant to procedures set forth in the ordinance (e.g. collection by means of small claims action or other civil remedy).

If the court finds in favor of the violator, the City must reimburse the appeal fee and refund any deposit of the fine that was paid to the city.

The City's decision to impose a fine is also subject to the administrative mandamus (writ) procedures set forth in Code of Civil Procedure Section 1094.5 and 1094.6. Pursuant to Section 1094.6, a person has 90 days from the date of the final decision to challenge an order by writ of mandate in Superior Court.

LIEN STRATEGY

In the event that the City is unable to collect the fine(s) from the property owner through the small claims court process, the City shall place a special assessment against the lot or parcel of land to which it relates and shall constitute a lien on the property for the amount of the assessment. Therefore, the assessment amount shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedures for foreclosure and sale in case of delinquency as provided for ordinary taxes.

In the case of a business, staff will work with the Municipal Services Division to withhold the renewal of the business license until such time that the fine is paid in full.

ACTION REQUIRED

Items that require further development for the implementation of an administrative penalty process include: establishing the amount of the penalties; creation of a citation form; receiving approval from the courts; training of code enforcement personnel; and training personnel to conduct administrative hearings. Staff anticipates completion of these items and full implementation by July 1, 1998.

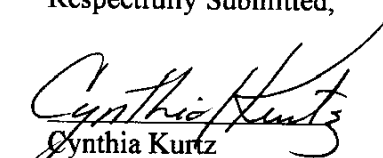
STAFF IMPACT

It is anticipated that the administrative penalty/citation process will assist the code enforcement inspectors in quickly abating code violations, therefore reducing the amount of time on administrative work, case preparation, and follow-up. This should allow the inspectors to dedicate more time to actual field inspections, thus increasing the efficiency of the code compliance unit.

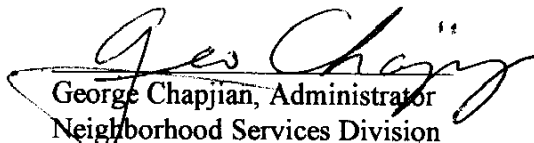
FISCAL IMPACT

The Neighborhood Services Division anticipates imposing fines on less than 5 percent of the code enforcement cases (approximately 120 cases per year). Anticipated annual revenue from the administrative penalties should be approximately \$12,000. All incidental costs associated with this program (e.g., printing of citation forms, administrative hearings, etc.) will be offset by the projected revenue. The meaningful impact of this ordinance will be the overall improvements to the City's business districts and residential neighborhoods as a result of staff's ability to abate code violations in a more timely manner.


Respectfully Submitted,


Cynthia Kurtz
Acting City Manager

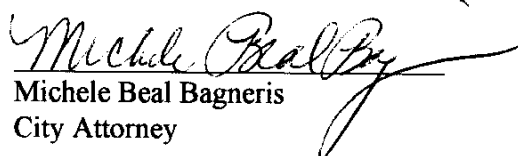
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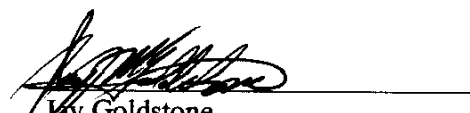

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