

CITY OF OAKLAND

Agenda Report

2011 AUG 30 PM 2:26

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: September 13, 2011
RE: Discussion And Action On How City Staff Are Implementing Recommendations
Of The Alameda County Civil Grand Jury Final Report On The City Of Oakland
Building Services Division

SUMMARY

On June 27, 2011, the Alameda County Civil Grand Jury (ACCGJ) issued a sixty-three (63) page report examining code enforcement activities of the Building Services Division (BSD) of the Community and Economic Development Agency (CEDA) and made ten (10) recommendations.

The Grand Jury report comes in the midst of current CEDA efforts to transform its code enforcement programs and services. CEDA recognizes the concerns expressed in the Grand Jury report and complaints from property owners and has been working to transform code enforcement operations back into neighborhood preservation approaches, activities, and services. The goal of the new program design is for code enforcement to focus its regulatory activities on priority neighborhood preservation issues, such as blighted foreclosed properties, substandard multi-family housing, and critical public health and safety concerns, while also providing better customer service and education.

CEDA has identified the following priority areas for immediate change efforts: 1) improving customer service and transparency; 2) developing a centralized data management system that is accessible to the public; 3) revising key elements of the due process procedures, including notices, liens, fees, and fines; 4) identifying a neutral appeals process that is feasible for City implementation; 5) creating a comprehensive operations manual with updated policies, procedures, and protocols; 6) engaging in enhanced staff development, training, and accountability; and 7) filling vacant positions that are key to sustaining the change efforts. CEDA efforts have already resulted in improvements in some areas, with the need for continuing efforts and the dedication of additional resources.

The Grand Jury recommendations serve only to strengthen the City's efforts to improve its code enforcement services. In addition, through a competitive process, CEDA had selected a consultant, Management Partners, to evaluate code enforcement protocols, establish best-practices benchmarks of other jurisdictions, and recommend modifications. The consultant's scope of work includes analyzing information systems, examining collection alternatives, and producing a procedures manual.

FISCAL IMPACT

This is an informational report. There are no direct fiscal impacts at this time. As part of CEDA's efforts to engage in proactive inspections and also improve collection mechanisms, staff will return to Council with updates about the fiscal status of these efforts.

BACKGROUND

In the past nineteen (19) years, BSD permitting and code enforcement staffing (management, supervisory, professional, technical, administrative) have been reduced by more than one-half (175 FTE in 1992, 81.5 FTE at present), while BSD's workload has more than doubled. During these two (2) decades, BSD has evolved into a "one-stop shop" for enforcing regulations in the Municipal Code related to construction, maintenance, and activities on private property and in the public right-of-way. Concurrent with BSD's staffing reductions has been a progressive shift from full funding by the General Purpose Fund in 1992 to full funding by permit and code enforcement fees in FY 2006/ 2007. Permit fees, however, cannot fund code enforcement activities (Health & Safety Code section 19132.3, Government Code section 66016), even though BSD's administrative staff and combination inspectors perform both duties. Consequently, code enforcement protocols and processes were infused with an emphasis on cost-recovery since its implementation by a former City Manager more than ten (10) years ago. While the practice was considered innovative at the time of a growing local and national economy, the results became counter-productive to preserving and enhancing neighborhood vitality when the economic circumstances changed so dramatically in recent years.

Public expectations of "do more with less" coupled with constituent expectations of "everything is equally important" has constrained BSD's operational options. Code enforcement priorities have transitioned from pro-active neighborhood revitalization based on public health severities in the early 1990's to today's complaint-based response to constituents. For the past several years, CEDA has been working to improve code enforcement services. There remain significant improvement areas, as identified in the Grand Jury recommendations, on which CEDA will continue working. More information is provided below.

KEY ISSUES AND IMPACTS

I. ACCGJ 2011 Report - Recommendations

On August 15, 2011, the City Administrator issued a preliminary response to the ten (10) recommendations in the ACCGJ report, a copy of which is attached. The response concurred or partially concurred with seven (7) recommendations, noted that one (1) recommendation had already been implemented, and advised that two (2) recommendations were being evaluated. The Grand Jury recommendations serve only to strengthen the City's efforts to improve our code enforcement services.

The following are the Grand Jury recommendations and a summary of the City's responses:

Grand Jury Recommendation 11-15:

The City of Oakland Building Services Division must ensure that the true property owners are notified of violations through every stage of the abatement process.

Response: The City partially concurs with this recommendation. The City currently meets the state and local requirements for notification of property owners. The City's access to accurate and up-to-date information about property ownership is based upon the information available from the Alameda County Clerk-Recorder's and Assessor's offices. In September 2011, the City will begin a pilot program of posting notices on the affected properties to assess the effectiveness of this additional notice. In addition, the City believes that it is currently providing notifications to property owners at key stages of the abatement process, including initial notice of blight, notice of re-inspection and associated fines, notice of right to appeal, notice of appeal hearing date for applicable appeals, and notice of liens. The City may provide additional noticing as part of our review of best practices from other jurisdictions.

Recommendation 11-16:

The City of Oakland Building Services Division must provide the property owner a clear written description in simple-to-understand language on the notice of violation, and not just refer the property owner to a city code section.

Response: The City concurs with this recommendation. It is essential that property owners understand the violations that have occurred and the remedies required if they are going to comply with City codes. More than a year ago, the City changed its inspection forms to provide greater details about the specific violations. The City will review sample notices from other jurisdictions, make further improvements to its notices, and run changes by a focus group, including community members, to ensure that the notices are written in plain English in order to facilitate compliance. It is anticipated that the final notices will be available Fall 2011.

Recommendation 11-17:

The City of Oakland Building Services Division must implement a training program that emphasizes working with – not against – property owners.

Response: The City concurs with this recommendation. The City will build on its existing training programs to improve relations with property owners and to ensure that inspectors understand the importance of educating residents and property owners, as well as enforcing

compliance with maintenance codes. The training program will build upon the City's existing practice of evaluating staff based upon customer service, problem-solving, collaboration, neighborhood revitalization, and other goals. The training program will be based upon best practice information from other jurisdictions and include actual case studies. We anticipate the training programs to be developed by Fall 2011 with implementation to begin by Spring 2012.

Recommendation 11-18:

The city of Oakland Building Services Division must eliminate the use of prospective liens.

Response: The City partially concurs with this recommendation. The City has currently suspended its use of prospective liens while assessing alternative mechanisms to provide constructive notice to property owners, including reviewing best practices from other jurisdictions. In the past, prospective liens in high amounts may have had an unintended, intimidating and punitive effect on property owners. However, using prospective liens in lower amounts is a valuable tool for the City because they serve as a placeholder until the priority (or actual) lien is placed, which provides notice to prospective buyers that there may be an issue with the property.

Recommendation 11-19:

The City of Oakland Building Services Division must revise fees and base them on actual reasonable costs incurred by the City.

Response: The City partially concurs with this recommendation. City fees are already based upon actual costs. The City will assess the "reasonableness" of its fees including the review of best practices from other jurisdictions in Fall 2011. Any proposed changes will then be provided to the City Council for approval and will continue to ensure that the fees do not exceed the actual costs.

Recommendation 11-20:

The City of Oakland Building Services Division must establish deadlines for the inspectors to respond to property owners.

Response: The City concurs with this recommendation, and is in the process of implementing established response standards. The City has an existing rule that inspectors respond to calls within 24 hours. This standard is included in staff performance evaluations. However, in order to improve customer responsiveness and service, the City is evaluating automated ways to track and monitor both the timeliness and the quality of the inspectors' response to calls. We anticipate best practice information from other jurisdictions by Fall 2011 to identify feasible automated systems that the City can use.

Recommendation 11-21:

The City of Oakland Building Services Division must develop an operations manual to ensure inspectors operate in a consistent manner in applying code enforcement.

Response: The City concurs with this recommendation. Beginning in Fall 2011, the City will be developing an operations manual based upon best practices. The manual will be based upon an assessment of existing City practices and procedures; a review of best practices from other jurisdictions; and the development of new protocols, policies, and procedures regarding notices, appeals, fees and liens, customer relations, abatement standards, and owner assistance resources. The City will engage in feedback sessions with community members as part of the development of the new operations manual. We anticipate that a comprehensive operations manual will be completed by Spring 2012. However, the different components of the operations manual will be implemented when developed, which may occur prior to Spring 2012.

Recommendation 11-22:

The City of Oakland Building Services Division must develop a centralized case management system that is easily accessible to all inspectors and property owners.

Response: The City concurs with this recommendation. The City has been working to develop a centralized database system for code enforcement. The City Council recently approved a contract for the development of such a database system with code enforcement operations as a top priority. It is anticipated that it will take about 18 months before a comprehensive, centralized case management database system will be fully operational. City staff will provide reports to the City Council's Community and Economic Development Committee regarding the progress and status of implementing this new system, including any changes to the schedule, cost, training efforts, and/or new issues that surface.

Recommendation 11-23:

The City of Oakland Building Services Division must establish a clear, simple, effective appeals process that is easily understood by the property owners and provides clear instructions for use.

Response: The City concurs with this recommendation. Currently appeals of blight violations and liens are heard by Building Services supervisors who are experienced in the City's code and accounting issues. However, to enhance the impartiality of the process, the City is evaluating the creation of a neutral appeals process for all appeals. In the meantime, the City will develop a clear, written description of the appeals process, which will be in place by Fall 2011. The City will evaluate best practices related to alternative neutral appeals

processes by Fall 2011. The evaluation of expanding the neutral appeals process to all appeals, including the cost-effectiveness, will occur by Winter 2011-12.

Recommendation 11-24:

The City of Oakland Building Services Division must immediately establish an ombudsman function (not a Building Services manager or inspector) to review all appeals and to assist the property owner.

Response: The City would like to implement this recommendation if resources are available. We will assess the viability of implementing this recommendation given funding constraints and recent budget and staffing reductions. The City will evaluate best practices used by other jurisdictions, as well as alternative resources for the ombudsperson.

CEDA agrees fully with the report's direction of enhancing policy transparency and process clarity and has selected a consultant, Management Partners, to evaluate code enforcement protocols, establish best-practices benchmarks of other jurisdictions, and recommend modifications. The consultant's scope of work includes analyzing information systems, examining collection alternatives, and producing a procedures manual.

II. Code Enforcement Transformation Priorities and Immediate Work Plan

The following is a summary of CEDA's overall goals for transforming our code enforcement operations, as well as our immediate work plan.

A. Re-Focusing on Neighborhood Preservation

The overall goal is to transform code enforcement operations back into its neighborhood preservation roots (pre-Loma Prieta earthquake) utilizing the City's regulatory powers and provide better customer service. Operational focus would be re-prioritized to align with community stabilization and redevelopment needs. Current and new neighborhood preservation priorities include:

- blighted foreclosed properties, substandard multiple-family housing, and public safety hazards;
- identifying resources to assist low-income senior citizens with removing blight;
- identifying opportunities for jobs for Oakland residents, including those with barriers to employment.

Code enforcement's goal will be resolving neighborhood and individual property owner problems by working with key stakeholders including community and neighborhood

organizations, property owners, and other public agencies. To reach this goal will require changes in the organizational systems, protocols, processes, and practices. The specific change areas to strengthen systems and re-focus limited resources include the following:

- o **Contracting Procedures**
Improving internal controls to ensure transparency and accountability in contracting procedures.
- o **Processes and Notices**
Updating and modifying procedures and forms, including use of prospective liens, identification of property owners, and customer friendly notices.
- o **Fee Schedule**
Reviewing code enforcement fees and funding mechanisms of other jurisdictions.
- o **Appeals**
Developing a neutral appeals process, which would include an initial technical review, to ensure that property owners understand the abatement and appeals processes.
- o **Data Management**
Building on the prior implementation several years ago of the Electronic Data Management System (electronic library) and developing an adequate, modernized centralized data management system that is also accessible to the public.
- o **Customer Relations**
Engaging in program re-design to align projects, services, and staff with neighborhood preservation goals, including staff development in customer relations and problem-solving.
- o **Staff Development**
Developing an operations manual and staff training for consistent implementation, which will incorporate existing documents and materials and include protocols for communications with constituents.
- o **Proactive Inspections**
Re-programming limited resources to proactively focus on major community problems such as blighted foreclosed properties.
- o **Collaboration**
Enhancing collaborative efforts with other City departments, public agencies, and community organizations to leverage resources for outreach and referral and targeted code enforcement actions.

- o Collections

Improving collection mechanisms to mitigate impact on property lending and sales and to enhance City collection rates.

B. Code Enforcement Immediate Change Workplan

CEDA will be focusing on the following priority improvements and expects significant improvements in the next six (6) months. To assist in the provision of best practices information from other jurisdictions, CEDA had issued a Request For Qualifications (RFQ) and selected a management consultant firm, Management Partners, prior to the ACCGJ report.

- o **Customer Contact and Feedback**

- Improvements will include developing an automated tracking system for telephone calls that is compatible with the City's voicemail system.
- Until the new Accela database management program is fully operational, BSD will develop an interim survey tool to collect customer feedback and integrate it into program evaluation activities.

- o **Due Process (Notices, Liens, Fees, and Fines)**

- Revising notices to be more user-friendly.
- Investigating alternatives to prospective liens to provide constructive notice of violations and potential liens for potential purchasers and lenders. It is important to note that in 2010, more than \$100,000 of BSD's liens was not collected when properties were sold because no prospective or priority liens had yet been recorded.
- Piloting the posting of abatement notices to assess the effectiveness of an alternative mechanism for contacting the current property owner.
- Reviewing alternative funding sources and collection mechanisms and scalable cost-recovery fees.

- o Appeals

Developing a neutral appeals process and evaluating the feasibility of an ombudsperson.

- o **Policies and Procedures**

- Creating abatement procedures that distinguish owner-occupants, landlords, and "institutional" owners.
- Transitioning from complaint-based inspections to proactive inspections, beginning with a pilot program for lender-owned properties, and implementing partnerships with public agencies and community groups to revitalize neighborhoods.
- Developing alternative collection mechanisms, including monetizing code enforcement liens ("cash-out"), in partnership with the Finance and Management

Agency (FMA), the County Assessor, the County Tax Collector, and the City Attorney.

o Staff Development and Accountability

- Developing an operations manual and follow-up staff training.
- Developing staff training in problem solving to support community enhancement, quality of life in neighborhoods, and stabilization of community character.
- Developing staff training on customer relations and communication and including performance benchmarks in staff performance evaluations.
- Implementing team debriefing and problem-solving meetings.

o Proactive Inspections Based Upon Collaborative Planning Efforts

Building upon BSD's new blighted lender-owned foreclosed properties inspection efforts and partnerships, CEDA will be engaging in planning activities to prioritize code enforcement activities on priority community areas, such as potentially focusing inspections on children's health outcomes, multi-family substandard housing, and public safety enforcement priorities. Potential partners include the groups that have been working together on the blighted bank-owned foreclosure program, such as Alameda County Public Health Department, AACE, OCO, Causa Justa: Just Cause, California Reinvestment Coalition, CEDA Housing, Council offices, the City Attorney's office, and the City Administrator's office.

o Data Management

Council recently approved a contract with Accela Corporation for the implementation of their data management system which will integrate code enforcement, permitting, and planning functions and also provide on-line access for the public. "Go-live" is anticipated within eighteen (18) months.

C. Summary of Interim Code Enforcement Process Improvement Outcomes

BSD anticipates that the following process improvements will be implemented by Spring 2012:

- o Identification of a compatible automated system to monitor customer call-backs.
- o Evaluation of alternative lien collection methods, including County tax auctions and vendor monetizing (cash-out).
- o Completion of Accela's design and data transfer work plan milestones.
- o Revision of abatement and appeal notices and development of additional customer service materials.
- o Development of abatement procedures that distinguish between owner-occupied properties, landlord owned properties, and "institutional" owned properties.

- Development of training protocols for neighborhood preservation, customer service, and abatement problem-solving.
- Developing a feedback process for staff to access their understanding of neighborhood preservation goals, roles, and duties.
- Developing proactive inspection priorities and curtailing many constituent-identified enforcement categories.
- Benchmarking fees and alternative funding mechanisms with other jurisdictions.

D. Prior Code Enforcement Process Improvements

In the past two (2) years, BSD has implemented changes to address improvement needs. These changes have occurred during two (2) challenging budget cycles when code enforcement staffing has been significantly reduced while its workload has significantly increased. Given these realities, we are called upon to focus City limited resources on priority code enforcement activities that will result in significant community and neighborhood improvements, and focus our staff training, development, and accountability to achieve optimal results.

- Customer Service and Transparency
 - Improved BSD's response to 100,000 annual constituent calls following the disbanding of its call center (budget reduction).
 - Provided public terminal access to BSD's legacy computerized database (PTS).
 - Developed a protocol that inspectors respond within 24 hours of call, which was included in staff evaluation.
- Contracting Controls
 - Review and approval by four (4) different staff of abatement contract bids and awards and approval by two (2) additional staff of contractor payments.
 - Including emergency contracts in the online competitive bidding process.
 - Capping change orders at thirty-one percent (31%); requiring public re-bidding of the changed conditions exceeding thirty-one (31%) of the original contract amount; and clearly documenting the rationale for change orders.
 - Contracting changes have increased the number of contractors in the bidding pool list by about four (4) times.
- Staff Accountability and Consistency
 - Reorganized staffing to increase code enforcement supervision and increased staff accountability and consistency by re-assigning inspectors to work either in rental housing or blight or the newly created foreclosed properties units.

- Changed inspector protocols to require standardized inspection documentation into the BSD's legacy computerized data management system (PTS).
- Transferred the review of inspection charges from administrative staff to accounting staff for quality control which has resulted in significant reductions in billing errors to property owners.
- o Due Process (Notices, Liens, Fees, and Fines)
 - Improved inspection warrant protocols for enhanced due process.
 - Revised inspection forms for added clarity and specificity to enhance process controls.
 - Changed the prospective lien amount from the value of the property to "not less than \$1,000." BSD has now suspended the use of prospective liens.
 - Reconciled ("true-up") BSD's accounting records with the City's general ledger and the County Assessor's tax records, which was essential for the development of alternative collection mechanisms.
- o Appeals
Transferred billing appeals from administrative staff to accounting staff
- o Policies and Procedures
 - Developed illustrated guides for blight abatement to increase contractor understanding and staff consistency.
 - Prioritized proactive inspections of foreclosed properties.

III. ACCGJ 2011 Report - Clarifications

While CEDA concurs with many of the ACCGJ recommendations, it is important to note that key points in the report would have benefited from the inclusion of additional information to establish a clearer set of facts:

A. 2000 ACCGJ Recommendation 00-38: Use pre-emptive liens as a last resort.

In actuality, the City did not concur with the Grand Jury's 2000 recommendation to use prospective liens as a last resort. The City's response in 2000 explained the BSD's use of prospective (pre-emptive) liens, the rationale for which has not changed in the ensuing years.

The following was the City's response:

The City will remove or not file the notice of prospective lien, if the owner or buyer provides a compliance plan that will commit appropriate funds or assurances that will ensure the violations will be abated in a timely manner and that all fees and penalties are

paid. The City will also evaluate a policy of not using the notice of prospective liens on a case by case basis when it is in the best interest for the City to facilitate blight abatement.

BSD has now suspended the filing of prospective liens while the consultant completes an assessment of alternative mechanisms for providing constructive notice to purchasers and lenders. BSD has used prospective liens as an interim title encumbrance until priority liens were recorded, which can be delayed as long as five (5) months. In 2010, more than \$100,000 of BSD's liens was not collected when properties were sold because no prospective or priority liens had yet been recorded.

B. Code Enforcement Contracting Procedures

The City's contracting procedures provide for an informal competitive process for construction contracts under \$50,000. In the past several years, BSD has improved these contracting protocols by revising its internal controls, including the following:

- Contractor bids and contract awards are reviewed and approved by four (4) different staff, and contractor payments are approved by two (2) additional staff
- Emergency contracts are included in the online announcements of the competitive bidding process.
- Change orders are capped at thirty-one percent (31%) percent and changed conditions exceeding the cap require public re-bidding. The rationale for change orders must also be clearly documented.

Contracting changes (and economic conditions) have increased the number of contractors in the bidding pool list by about four times.

C. Code Enforcement Abatement Process and Procedures

○ Timeline Clarifications

For blight violations, property owners have twenty-one (21) days to appeal, rather than the report's stated seven (7) days to appeal. In addition, inspectors do not return to re-inspect the property until thirty (30) days after the notice. On public nuisance and imminent hazard violations, owners have thirty (30) days to get the permit and sixty (60) more days to complete the work. The City does not charge property owners until after the appeal period has expired. For those who submit an appeal, charges are not filed until after the appeal is concluded.

○ Filing System Clarifications

The report states that the City lacks a consistent system for maintaining files and does not track appeals. It does not appear that staff had the opportunity to demonstrate its systems,

processes or information about the City's file maintenance or appeals database systems.

- BSD currently has a database that tracks inspections and fees (PTS) and an electronic library for uploading relevant case file documents (EDMS).
- BSD also tracks appeals and other procedures through other mechanisms.
- PTS was made publicly accessible at a public terminal more than eighteen (18) months ago. The placement of comprehensive files in the EDMS has been limited by budget cuts and staff reductions. BSD and Planning and Zoning will be utilizing a new database system that integrates the PTS and EDMS databases, allows more reports to be run, and provides improved access for the public.

o Appeals Clarifications

- The Grand Jury report stated that the City requires a compliance plan before an appeal can occur or a lien can be cleared. This information is inaccurate. BSD only requires a compliance plan when a permit is needed to abate the violation. Compliance plans are not required before an appeal can occur or priority liens cleared. The report also inaccurately states that substantial fees must be paid prior to filing an appeal. No fees must be paid prior to filing an appeal, with the exception of the appeal fee of \$113.61 for appeals heard by Hearing Examiners.
- Regarding the assertion in the Grand Jury report that the City does not track appeals, we are clarifying that BSD does track appeals through several database processes. However, BSD currently does not have an automated system that can easily pull consolidated information on all appeals. We anticipate that the new automated database management system should enable us to provide this function.

o Abatement Clarifications

- Toys in the yard resulted in demolishing a building.
A neighbor complained of a garage conversion for day-care use without permits. The code enforcement action was closed two (2) years later after the remodeling and the bathroom addition to the rear of the garage were removed.
- Stagnant water resulted in backfilling a swimming pool.
In the past twenty (20) years, several Oakland children have drowned in abandoned pools which were boarded-over or fenced-off. Vacant homes with backyard pools are potential health and safety hazards for children which code enforcement abates by backfilling.

D. Code Enforcement Protocols - Legal Sufficiency

While not minimizing the seriousness of the Grand Jury report and resident complaints, it is also important to note, given some allegations, that BSD's practices and procedures meet legal requirements. For example, in the past two (2) years, several enforcement agencies have reviewed code enforcement's policies and procedures and did not identify any protocols which

do not meet minimum statutory requirements. Where suggestions were made for improvements, BSD immediately implemented the recommendations.

CONCLUSION

The City appreciates the Grand Jury's efforts and recommendations for improving code enforcement services. The recommendations come at a time when CEDA has been embarking on critical improvement needs, including in staff development, automated and more accessible database management systems, program design, and protocols and procedures. The Grand Jury recommendations support our efforts to provide better public service.

SUSTAINABLE OPPORTUNITIES

Economic

Code enforcement improves the economic vitality of neighborhoods and viability of commercial districts by reducing property blight, maintaining rental-unit habitability, controlling land use activities, and enhancing quality of life perceptions of Oakland residents.

Environmental

Code enforcement maintenance regimens promote the abatement, mitigation, and remediation of vector and environmental health hazards, including rodent harborages, lead-based paint, toxics, and respiratory pollutants.

Social Equity

Code enforcement regulation of the State Housing Law contributes to fair housing practices for low and moderate income renters.

DISABILITY AND SENIOR CITIZEN ACCESS

Code enforcement abatement actions include requiring rehabilitation permits which can necessitate improvements to handicapped accessibility.

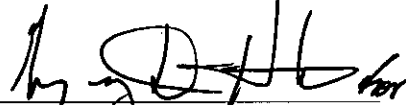
ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council accept this report and requests that the City Administrator return to the CED Committee with a progress report on the following:

- o Accela work plan implementation;
- o Management Partners work plan implementation;

- Building Services interim process improvement implementation;
- recommendations for increasing proactive enforcement and diminishing complaint-based enforcement.

Respectfully submitted,



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APPROVED AND FORWARDED TO THE COMMUNITY
AND ECONOMIC DEVELOPMENT AGENCY


Office of the City Administrator