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Title: Director of Planning, Building, and Environmental Services will provide an update on the Code Compliance program for FY 22/23.

Sponsors: Board of Supervisors

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Code sections:

Attachments: 1. Policy and Procedure Manual, 2. PowerPoint (added after meeting)

Date	Ver.	Action By	Action	Result
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TO: Board of Supervisors

FROM: Brian D. Bordona, Director of Planning Building & Environmental Services

REPORT BY: Akenya Robinson-Webb, Code Compliance Supervisor

SUBJECT: Annual Code Compliance Division Update

RECOMMENDATION

Director of Planning, Building, and Environmental Services will provide an update on the Code Compliance program for FY 22/23.

EXECUTIVE SUMMARY

The County is committed to maintaining the quality of life in Napa County and the Code Compliance Division assists in that effort through obtaining compliance through enforcing multiple State and local laws and regulations. Through education and enforcement, the Code Compliance Division achieves the abatement of violations that may constitute threats to public health and safety or may cause significant environmental damage. In this way, the Division gives meaning to the permits and approvals issued by the other divisions of PBES.

Because the County is large and staffing is limited, the Code Compliance division operates primarily through responsive enforcement, where staff investigates complaints received by the public in confidence. However, the Division also operates through proactive enforcement of building violations, the Use Permit Compliance Program, transient occupancy enforcement, and the Neighborhood Property Improvement Program. These programs either involve violations discovered by staff or self-reported by property owners. While no program can identify all code violations, the Division’s goal is to combine responsive enforcement with proactive

enforcement to provide meaningful and effective reach across the County.

This update seeks to provide the Board with an overview of the Code Compliance program as well as highlight notable accomplishments during FY 22/23. Staff will also outline several goals for the future of the code compliance program, which staff intends to bring to the Board in 2024.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Healthy, Safe, and Welcoming Place to Live, Work, and Visit

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Code Compliance Division (Division) is charged with ensuring compliance with State and Local adopted codes relating to building and zoning requirements, health and safety concerns, property maintenance standards, and other land use laws and regulations. The Division's goal is compliance and values community engagement through education.

In 2017 the Board of Supervisors adopted the Code Compliance Policy and Procedure Manual set forth the Division's policy directives and outline procedures for staff to follow. Generally, the policies promote efforts for voluntary compliance. Once a violation is identified, staff issues a Notice of Apparent Violation which identifies the potential violations and corrective action and provides a deadline for voluntary compliance. Often, property owners simply need to apply for a permit to correct the violation and Staff will work with property owners to assist in that process until compliance is achieved. If the property owners are not making reasonable progress towards compliance, staff may exercise any of the three formal civil enforcement options described in the compliance manual which may include one or more of the following: administrative abatement, citations, or referral to County Counsel. In rare cases, violations may also be appropriately referred to the District Attorney for criminal enforcement, or to the Department of Fish and Wildlife, the Regional Waterboard, or other governing agencies.

Code Compliance cases are divided into seven categories based on the violations identified. The majority of cases are building permit enforcement, property nuisance, and zoning enforcement. Many involve multiple categories of violations, in which case, Code Compliance works with an interdisciplinary team involving the affected Divisions or Departments. The following is a breakdown of the seven case categories and the average percentage of case type per year:

- Building Permit Enforcement - Unpermitted construction, illegal conversions of structures - 38%
- Zoning Enforcement and Use Permit- Businesses and other members operating outside their allowed uses within their zoning district - 17%
- Property Nuisance - Substandard property maintenance such as excess debris and materials on the property, vehicles parked on unimproved surfaces longer than 3 days - 25%
- Grading - Earth movement without prior approval - 10%

- Conservation Regulations - Stream and wetland setbacks, tree removal, vineyard installation without an approved ECPA - 6%
- Substandard Buildings - Dilapidated structures, housing unfit for human habitation - 3%
- Stormwater/Flood Plain - Illicit discharge and structures located in the floodplain without approval - 1%

When the County receives a complaint, a case is created in the tracking system and the case is assigned a priority. The priorities are defined as follows:

- Priority 1 - Safety related complaints such as building without a permit, unsafe structures, and environmental hazards.
- Priority 2 - Non-Safety related complaints such as zoning violations and property nuisances.

Priority one cases are investigated as soon as possible to ensure that any immediate threat to health and safety is identified and corrected. Priority two cases are given priority as staff is available and able to attend to them.

County Counsel's Role in the Code Enforcement Process

County Counsel supports the Code Compliance team in several ways throughout the enforcement process. Deputies work closely with Code Compliance staff on individual cases as well as program-wide issues. Counsel advise staff on specific approaches to assist property owners in achieving compliance, mediate in cases where staff and property owners may reach impasse, and litigate on behalf of the County where voluntary compliance is not forthcoming. The Napa County Code provides that County Counsel may commence civil proceedings for the abatement, removal, correction and enjoinder of violations, as well as the imposition of civil penalties and abatement costs. The Policies and Procedures Manual provides that referral of cases to County Counsel is one among several options for formal enforcement after efforts to attain voluntary compliance are exhausted or futile.

In addition to case-specific services, County Counsel also provides assistance with process improvement and revisions, as well as advice and training on the legal boundaries of code compliance activities. For example, the process for obtaining an inspection warrant requires filing an application with the Court, accompanied by a declaration or affidavit from a code compliance officer. To ensure the process was efficient and effective, as well as in compliance with state law, County Counsel met with the presiding judges to develop a workflow for such applications, avoiding unnecessary obstacles for Code Compliance staff to perform their duties.

Like with other departments and divisions, County Counsel also supports staff in making more substantial changes to the Code Compliance program. County Counsel helped to prepare the Policy and Procedures Manual in 2017 and the Code Compliance Resolution in 2018.

Permit Enforcement FY 22/23

As mentioned above, a majority of the cases relate to building code or permit enforcement. In the past fiscal year, staff identified over \$13.26 million worth of illegal construction. Not only does that represent a significant amount of work being done out of compliance with the applicable Building Codes, but also represents

substantial building permit fees that are not paid to the County. In the 2022/2023 fiscal year, the Division's activities generated \$599,762 in permit fees related to correcting those violations. Staff is proactive in building permit enforcement due to the health and safety concerns associated with construction codes.

Notable Achievements

In addition to the building permit fees, the Division has had many successes in the last fiscal year. Most of the Division's focus is on the backlog of cases, which has reached over 1,000. During 2022/2023, four Code Compliance officers closed 199 cases, averaging about 50 case closures each. The backlog continues to grow, as 316 new cases were opened during the last year. Code staff was able to close long-term cases including one that consisted of an illegal construction of a dwelling and multiple structures built within the Special Flood Hazard Area without first obtaining a permit. Staff conducted two abatements including a large landslide and a debris and removal abatement.

Code Compliance staff also works on broader program improvement. In the last year, Staff sought feedback from other divisions, departments, and members of the public who are involved in the code compliance process. Code Compliance used the feedback to develop and implement process improvement procedures and documents such as the Building Correction Violation Checklist. Code Compliance staff also identified sections of the Policy and Procedures Manual that can be updated to better serve the needs of the community.

Future Program Goals

Neighborhood Property Improvement Program:

In 2015 the Code Compliance Division initiated the Neighborhood Property Improvement Program (NPIP) to reduce the number of properties with nuisance related issues. The Neighborhood Property Improvement Program takes a proactive approach by educating residents and working with them to obtain compliance with the County's property maintenance standards set forth in NCC Section 1.20.022 (Nuisance Abatement). During the program, code staff take to the street, often by foot, and attempt to meet with the residents to discuss compliance.

Staff's goal is to provide education and discuss the relevant codes. This is an excellent opportunity to have some face time with members of the community so they understand what Code Compliance is and how the program can improve their neighborhood. We often will include other County Departments in the program such as the Problem-Oriented Policing (POP) team in the Sheriff's office, the Fire Marshal, and the Public Works department. The neighborhoods are chosen based on observations from Code Compliance officers, data regarding the amount of nuisance violations in area, or at the request of the community.

Typical violations identified during inspections are vehicles parked on an unimproved surface, excess trash and debris, improper storage of construction materials, and other property maintenance violations.

Due to competing priorities and case load, staff has been unable to continue the program the past four years. The Code Division has received some interest from members of the public for the program to return. The program is effective in identifying property nuisance issues and connecting with the community to encourage voluntary compliance. Most people, once informed, will voluntarily comply and clean the property. However, the program does require a substantial amount of follow-up that adds to staff's case load. Our goal is to implement a bi-annual Neighborhood Property Improvement Program which will help to maintain healthy

neighborhoods throughout the County.

Proposed Improvements to Code Compliance Program

1. Policy and Procedures Manual

The Policy and Procedures Manual represents efforts by staff and the Board to establish priorities and policy decisions and to outline the mechanisms for achieving the priorities set by the Board. However, the Manual combines two levels of management of the Code Compliance division that generally should be handled separately. The Manual incorporates the Board's determinations on broad policies, goals, priorities, and objectives. This policy-making underpins the entire code compliance program and directs the actions of staff.

At the same time, the Manual identifies specific procedures for carrying out the objectives set by the Board. For example, the Manual provides for how cases should be labeled in the case management software, for the specific workflow after receiving an initial complaint, and how to document extensions to various deadlines. These are important procedures for the Code Compliance Division to establish but should be flexible to allow staff to adapt the program to its needs, within the framework of the policies and goals established by the Board.

However, because the Manual was adopted by the Board, such changes to address day-to-day issues would require Board action, which limits staff ability to implement process improvements. To address this issue, Counsel and Staff will return at a future meeting to discuss potential updates to the Manual to maintain the broad policy goals and priorities of the Board but would enable Code Compliance Staff more flexibility to adapt the program to meet those policy directives.

2. Updating Administrative Fines and Cost Recovery

State law and the Napa County Code provide that Code Enforcement Officers can impose administrative fines and penalties through the issuance of citations. The amounts of those fines are capped by state law, but are set by resolution of the Board. The fines are generally graduated, increasing with each occurrence of a violation.

In 2021, the California legislature passed a bill to increase certain fines or penalties that can be imposed for specific violations. Penalties were increased to ensure that they provided an appropriate incentive to comply with the law. Staff intends to bring a future agenda item to align the County's fines and penalties with State Law.

In addition to fines and penalties, Counsel and staff will also be examining the provisions for the recovery of the administrative costs of abatement. State law provides that a violator is liable for the costs of abatement of a nuisance, but recovery requires a local ordinance and procedures for recovery. This is especially true where compliance is achieved without litigation, as there is no specific mechanism for billing the property owner for costs incurred to achieve it. The goal of any Code Compliance program is to be cost-neutral, so that taxpayers are not left with the bill to correct violations. Staff intends to bring a future item to address cost recovery.

3. Revising Administrative Abatement Procedures

County Counsel and Code Compliance Staff are also working on a broader, long-term effort to focus the Code Compliance Program on administrative abatement, rather than resorting to litigation. Currently, the primary approach after voluntary compliance cannot be achieved is to file a nuisance action seeking an order of the

Court to correct the violations. While this can be effective and could be necessary where an injunction is in order, it can also be slow and costly.

Counsel and Staff wish to improve the process and procedure for administrative abatement, where a hearing could be held before a hearing officer to determine the scope and extent of a violation and appropriate remedy for it. The hearing officer can order abatement of the nuisance and that order could be entered as an order of the Court if enforcement action is needed. The hearing officer could also order payment of abatement costs and penalties, which can be recovered through a special assessment process.

Current Napa County Code provisions require such hearings to be held before the Board of Supervisors. Staff intends to bring a future agenda item to make changes to the Napa County Code to facilitate administrative abatement and ensure the process is both efficient for staff, but protective of the due process rights for property owners. The goal will be to provide a prompt resolution where currently matters can take years to resolve through litigation.