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SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FILE 405



FROM: Executive Office

SUBMITTAL DATE:
September 13, 2005

SUBJECT: Response to the Grand Jury Report: Riverside County Code Enforcement

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding the Riverside County Code Enforcement.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On July 12, 2005, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding the Riverside County Code Enforcement.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

Mary Christmas
GARY CHRISTMAS
Deputy County Executive Officer

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FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE.

County Executive Office Signature

Samuel M. Kelly

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended with direction to staff to set up a workshop after six months to give a status report, see what can be done to expedite process and report on a receivership program.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley
Nays: None
Absent: None
Date: September 13, 2005
xc: E.O., Grand Jury, Code Enforcement, Presiding Judge, Co. Clk. & Recorder, COB

Nancy Romero
Clerk of the Board
By: *Nancy Romero*
Deputy

Prev. Agn. Ref.: 3.7- 7/12/05

District:

Agenda Number:

3.3

Departmental Concurrence

Policy

Policy

Consent

Consent

Dept's Recomm.:

Per Exec. Ofc.:

**RIVERSIDE COUNTY CODE ENFORCEMENT
Findings and Recommendations**

FINDINGS:

Number 1:

The Grand Jury reviewed a document in which a Code Enforcement Supervisor certified to the court under *penalty of perjury*, that all items listed in the Seizure Warrant had been removed from the owner's property and disposed of lawfully. Grand Jury investigation revealed that in fact, all items listed were not removed and no hazardous materials were abated from the property.

Response:

Respondent disagrees wholly with the finding.

After a thorough examination of all evidence provided by the Grand Jury, the Department could find no evidence to support the Grand Jury's finding that items listed in the Seizure Warrant had not been removed, and that a Code Enforcement Supervisor erroneously certified to the court that all items had been removed. On the contrary, the evidence shows that all materials subject to abatement as "excess outside storage" were seized and abated during the execution of the warrants and that the Code Enforcement Supervisor did not error in certifying this to the Court.

The attached Code Enforcement photographs, taken before and after the abatement, illustrate that the items subject to abatement were removed. The Grand Jury notes that eighty (80) tons of materials were abated from the subject property. It is unclear how this conclusion was derived. However, the Grand Jury submitted evidence reflecting that as much as thirty (30) to thirty-five (35) gross tons of materials may have been removed from the subject property by the Contractor during the abatement. In any case, the evidence reflects that the "excess outside storage" subject to abatement by the Order and Seizure Warrant was abated and removed.

The Code Enforcement Investigation Report (supported in part by the video) reflects that at least one Code Enforcement Officer was present on the subject property throughout the abatement, with the exception of a 2 1/4 hour period during mid-day on the last day of the abatement. The Code Enforcement Supervisor, who certified to the Court that the abatement was complete, was present from time to time during the execution of the warrants. Following the Code Enforcement Officer's notification that the abatement had been completed, the Supervisor returned to the subject property and inspected it. The Supervisor's confirmation and Court certification was based on his own first hand knowledge and the statements made by the officers present on the property during the abatement.

With respect to hazardous materials and hazardous waste, California Waste Control Law dictates the regulation and abatement of hazardous materials and hazardous waste stored outside on real property. No hazardous materials or hazardous waste could be abated as "excess outside storage" under County ordinance because the local ordinance would be preempted by State law and would exceed the County's constitutional police power. Under State law,

hazardous materials and hazardous waste are regulated and abated by the Department of Environmental Health.

In conclusion, the evidence reflects that the "excess outside storage" subject to abatement under the Board's Order and Seizure Warrant was seized and abated. No hazardous materials or hazardous wastes were subject to abatement under the Board's Order or the Seizure Warrant because it would have been unconstitutional and unlawful for Code Enforcement to abate these hazardous materials. The Code Enforcement Supervisor and the District Attorney Investigator acted properly when they informed the Contractor not to seize them. Furthermore, the evidence reflects that the Code Enforcement Supervisor acted properly in certifying to the Court that the abatement was complete.

Number 2:

Property owners may request a zoning change through the Planning Department to bring the property into compliance. The Grand Jury has found that the Planning Department allows these requests to remain in its Land Management System for months, and sometimes years, before being addressed. In several instances it was found that property abatement goes forward before the Planning Department addresses the zoning change requests.

Response:

Respondent partially disagrees with the finding

There is no zoning change that will bring a property into compliance. Therefore, violations for public nuisances would continue regardless of the zoning or request for re-zoning on a property. The department agrees that processing a zone change can be a lengthy process.

Number 3:

When Code Enforcement schedules an abatement walk-through of a property with a licensed contractor, an inventory list of items to be removed is rarely supplied to the contractor. Without documentation, Code Enforcement cannot be certain that all items requested to be removed by the execution of Seizure Warrant were actually taken.

Response:

Respondent partially disagrees with the finding

The description of the excessive outside storage begins in the Code Enforcement Officer's report, which includes photographs, and is carried forward into the body of the Board of Supervisor's Findings of Fact, Conclusions, and Order to Abate Nuisance, and finally, into the body of the Seizure Warrant and corresponding declaration. In accordance with County Ordinances, the materials are identified with enough specificity to adequately describe the materials. When dealing with piles of trash and debris, it is impossible for the officer to inventory every item. However, as a result of the Grand Jury's concern, the department will enhance procedures to address the inventory on a categorical basis. Larger and more identifiable items may be listed separately on the Board Order and ensuing Seizure Warrant.

Number 4:

Testimony from several contractors revealed that Code Enforcement told them to take everything including salvageable materials to a waste disposal site. However, the standard purchase order that TLMA issues to contractors to remove debris, excessive outside storage, etc., clearly states, "All salvaged items shall be itemized in a list presented to the county. The value of the salvaged items shall offset the cost charged to the county for abatement." Contractors are not reimbursing the county after removing salvageable materials from an abated property.

Response:

Respondent disagrees partially with the finding.

Currently, there is no requirement for the County to offset the costs of abatement by requiring contractors to sell salvageable material and remit the proceeds to the County. The Board, however, may decide to set a policy which results in this practice.

Code Enforcement's long term interpretation of the language included in the purchase order is that the contractor who submits the lowest bid is not required to further decrease compensation by remitting proceeds from the salvaged materials to the County, but instead, deducts the estimated proceeds from the gross bid.

The Grand Jury's finding focuses on the language of a standard purchase order that has been used without question or material modification for approximately fifteen years. Although the purchase order could be read to require that the bidder remit proceeds from salvageable materials to the County, and therefore cause the potential contractor to increase his bid to off-set this remittance, Code Enforcement considers the stated condition fulfilled if the bidder offers his lowest possible net bid in anticipation of retaining any salvage proceeds.

Contractors have a built-in incentive to offer the lowest bid possible in order to be awarded the project. Therefore, contractors prefer to offer the lowest possible net bid. In addition, this practice places the entire risk of an erroneous estimate of salvage value on the Contractor, who bids as low as possible to win the award, and will take a loss if salvage proceeds are lower than estimated. If salvage proceeds are higher than estimated, the contractor is likely to have overbid and lost the award to another bidder who more accurately estimated the value of the salvage proceeds.

Should the County decide to adopt the Grand Jury's interpretation of the language of the purchase order, adequate and sufficient notice would have to be given to each potential contractor to ensure fairness. Code Enforcement will follow the policy direction of the Board.

Code Enforcement agrees that Contractors are not reimbursing the County after removing salvageable materials from an abated property. However, Code Enforcement believes that the current practice is reasonable, cost-effective, and efficient for the County and for the uncooperative property owners who had the opportunity to salvage the material themselves prior to abatement. A revision to

the current contract language will be explored with County Counsel to more clearly reflect the County's fifteen-year practice.

Number 5:

During an abatement case, eighty (80) tons of scrap metal was taken to a salvage yard and the contractor received a payment of \$2,999.55 for material. Similar cases have been discovered that total over \$6,600. As of June 2005, no payments have been received by the county.

Response:

Respondent disagrees partially with the finding.

Code Enforcement contacted the waste hauler in question and was unable to verify that the above stated amount is correct. The economics of the bidding process ensures that the value of the salvageable material is deducted from the abatement costs provided by the contractor. As a result, the County would have received no payments (see response to Finding #4).

Number 6:

The property owner is not advised that monies reimbursed from salvageable materials may help offset the abatement costs.

Response:

Respondent agrees with the finding.

Number 7:

When hazardous material is identified by Code Enforcement during a joint venture between county departments while executing an abatement order, no policy exists in the Code Enforcement Policy and Procedure Manual identifying the agency responsible to ensure the safe and lawful removal of the hazardous material.

Response:

Respondent partially disagrees with the finding

A revision will be made to the Code Enforcement Administrative Abatement procedure that will clarify the matter and give complete control and oversight of the abatement and removal of all identifiable hazardous materials to the Riverside County Environmental Health Department's Hazardous Materials Management Division.

Number 8:

The Code Enforcement process can take two to three years, sometimes longer, from the time of the original code violation until abatement has been accomplished.

Response:

Respondent agrees with the finding

Number 9:

The Grand Jury investigation revealed that Code Enforcement Officers have given conflicting advice to property owners regarding zoning changes.

Response:

Respondent partially disagrees with the finding.

Although staff will be instructed to refer all zoning questions to the Planning Department, some general information needs to be provided to property owners on how to proceed.

Number 10:

In a particular case, the property owner was given an additional citation for items that were already specifically listed for removal in the execution of a Seizure Warrant.

Response:

Respondent partially disagrees with the finding.

Staff is aware that a citation should not be issued on items identified in a Seizure Warrant, however, if items are brought on to the property following issuance of the Seizure Warrant, a citation may be issued.

Number 11:

Code Enforcement has an effective Vehicle Abatement program that has a line item in the budget for salvage material. However, no budget line item exists for other salvageable materials to credit funds back to the county.

Response:

Respondent partially agrees with the finding

The vehicle abatement-towing contract is awarded to vendors on an annual basis. The basis for the award of this contract is a standard rate per vehicle plus mileage from the site of the removal to the scrap yard. As such, the department receives an invoice for each vehicle removed. Vehicles removed under this program must be taken to an authorized scrap yard where salvage credits are generally awarded. With respect to the abatement of junk, trash, debris or substandard structures, the vendors bid a lump sum for each project and the disposal of the offending materials generally takes place at a County landfill where salvage credits are not awarded. Salvage credits are factored into the bid process by each vendor.

RECOMMENDATIONS:

Number 1:

When replying to the court that a Seizure Warrant has been lawfully executed, the Code Enforcement Supervisor must confirm that all listed items have been removed.

Response:

The recommendation will not be implemented because it is not warranted or is not reasonable.

Staff will continue to confirm and document to the best of their ability that all items listed in the Seizure Warrant have been removed.

Number 2:

The Planning Department must comply with established Board of Supervisors Policy A-57 (Attachment "A") when a code violation exists on a property and the owner has requested a zoning change. The policy states that all applications will be brought forward for hearing within six (6) months of the initial application.

Response:

The recommendation requires further analysis.

Many Code Enforcement actions involve other violations that cannot be remedied by a zone change. Policy A-57 may need to be modified to address properties with multiple code violations.

Number 3:

Code Enforcement develops and implements a policy which provides the abatement contractor with an inventory of all items to be removed from a property with copies to the property owner and case file.

Response:

The recommendation will not be implemented because it is not warranted or is not reasonable. .

A line item inventory of debris, junk and trash is overly burdensome. The categorical inventory of materials found in the Board of Supervisors' Findings of Fact, Conclusions, and Order to Abate Nuisance and the Seizure Warrant and declarations are sufficient to ensure compliance with County Ordinances and Codes. However, to address the Grand Jury's concern, debris, junk and trash will be more specifically categorized as to type (appliances, lumber, scrap metal, etc.).

Number 4:

Code Enforcement Officers present during property abatement must ensure that the contractor removes all items in violation and oversees that all salvageable

items are identified and disposed of, as required by the terms of the purchase order issued by TLMA.

Response:

The recommendation will not be implemented because it is not warranted or is unreasonable.

Code Enforcement staff is present during the abatement of public nuisances. However, staff cannot oversee the handling of salvageable materials without following the contractor off-site to the disposal yards. The economics of the bidding process ensures that the value of the salvageable material is deducted by the contractor from the abatement cost provided.

Number 5:

All monies received by a contractor for salvaged material must be remitted back to the county and subsequently to the property owner to help offset some of the costs of abatement.

Response:

The recommendation will not be implemented because it is not warranted or is not reasonable.

The economics of the bidding process ensures that the value of the salvageable material is deducted by the contractor from the abatement cost provided. As such, there is no money to remit back to the property owner.

Number 6:

The property owner must be advised of potential reimbursement from the County when salvageable items are identified during property abatement.

Response:

The recommendation will not be implemented because it is not warranted or is not reasonable.

The economics of the bidding process ensures that the value of the salvageable material is deducted by the contractor from the abatement cost provided. As a result, there is no potential reimbursement from the County.

Number 7:

Costs for abatement must be included in the contractor's bid when potentially hazardous materials are identified on a property. Subsequently, a definite policy must be established and implemented which identifies the agency responsible for safe removal when hazardous materials are abated.

Response:

The recommendation has been implemented.

The department will update its administrative abatement procedure to be consistent with County ordinances and State law, and will require oversight for all investigations of any observed hazardous materials by the Environmental Health Department's Hazardous Materials Management Division. This oversight will also include the ensuing abatement and removal of the hazardous materials discovered on the property. Some hazardous materials are removed by Environmental Health and/or their contractors and therefore will not be part of the award.

Number 8:

A uniform time process of one (1) year must be implemented when a Code Enforcement Officer issues a Notice/Citation, to ensure a timely closure of the case. Code Enforcement must modify their database to alert the Director of Code Enforcement of all open cases, which have exceeded a specific time period of ninety (90) days.

Response:

The recommendation will not be implemented because it is unwarranted or is not reasonable.

Because of varying factors outside the control of the Code Enforcement division, it is impossible to impose a specific compliance schedule on all investigations. Code Enforcement will continue to work case files in an appropriate manner to achieve compliance in the shortest period of time possible. With the advent of the new Hansen tracking system, Code Enforcement management will have better monitoring capabilities, including reports listing case files that have had no activity for a prescribed period of time. This will greatly enhance the ability to manage cases effectively.

Number 9:

Code Enforcement Officers must refer all requests for information on zone changes from the owner to the Planning Department.

Response:

The recommendation has been implemented.

Code Enforcement staff has been instructed to refer all zone change related questions to the Planning Department.

Number 10:

If a particular item is listed in a Seizure Warrant it must be removed without the issuance of an additional citation.

Response:

The recommendation has been implemented.

Although Code Enforcement was unable to confirm the Grand Jury's finding, staff has been instructed to discontinue issuing citations on items listed in the Seizure Warrant.

Number 11:

TLMA must establish a line item to account for money received from contractors for salvageable materials. An additional line item is needed to show reimbursement to the property owner.

Response:

The recommendation will not be implemented because it is unwarranted or is not feasible.

The economics of the bidding process ensures that the value of the salvageable material is deducted by the contractor from the abatement cost provided. Therefore, an additional line item to show reimbursements to the property owner is not necessary.

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