

PLANNING AND BUILDING

Code Enforcement Division

SUMMARY

The Mendocino County 2016-17 Grand Jury finds that the Code Enforcement Division of the Mendocino County Planning and Building Services Department does not initiate investigations, but as a policy matter primarily responds to complaints. There is a continuing backlog of unresolved complaints that are over one year old. The reasons for these shortcomings are inertia, lack of adequate staffing, and lack of direction from the Board of Supervisors and Department management. Interviews revealed that it is “*not a priority*” to provide online access of data maintained in both departments.

On November 3, 2015, the Board of Supervisors gave direction to apply County ordinances to County maintained buildings. To date, it is obvious that the condition of the buildings have not significantly improved. When interviewees were questioned by the Grand Jury, the condition of County maintained buildings was acknowledged as poor.

With the potential enactment of new and revised cannabis ordinances, it is clear that the Department will have to hire additional staff. It is also clear that new procedures need to be developed and implemented.

BACKGROUND

The Mendocino County 2016-17 Grand Jury (Grand Jury) reviewed the Code Enforcement Division (CED) operations in view of proposed upcoming additions to the duties of the division and ongoing concerns as to the processing of existing complaints of code violations. There is question as to the backlog of open complaints. While records were not available to establish exactly what the number of outstanding complaints was open for over one year, the general claim from various staff is the backlog has been reduced from over 2,000 complaints to approximately 300.

Mendocino County Planning and Building Services (P&B) and CED do not maintain a list of

complaints online, nor is a list available over-the-counter. The failure to have online data leads to the following concerns:

- to determine if a complaint has been filed on a specific property
- to know when a complaint has been corrected
- to know if there are duplicate filings of a complaint
- to have statistics to fairly assess the performance of the Department
- to understand departmental operations in the interest of transparency

The Grand Jury visited various locations at the County Administration Building and other County maintained buildings to observe if the County was complying with its own ordinances and regulations regarding code enforcement issues. The Grand Jury found a number of potential code enforcement violations that could affect the health of anyone visiting or working at the County Administration Building and satellite buildings.

APPROACH

The Grand Jury interviewed staff and management of P&B, reviewed online posted documentation from CED, read published policies and procedures and the 2003-04 Grand Jury report entitled, *A Review of the Code Enforcement Division of the Department of Planning and Building*. The Grand Jury also reviewed the report given by the Director of P&B to the Board of Supervisors (BOS). The Grand Jury visited several County offices and observed the conditions of the buildings, and interviewed members of the BOS and individuals associated with P&B.

DISCUSSION

How Code Enforcement Works

The CED responds to complaints when the document¹ is filed. California Penal Code §829.5 gives the authorization to the Code Enforcement Officer (Officer) “to issue citations, or file formal complaints.” An Officer is dispatched to investigate the complaint; if found to be valid, a notice of violation may be issued at the discretion of the Officer.

Currently, CED functions as a reactive agency. This means CED does not investigate potential violations on its own initiative. The investigations are primarily performed when a complaint is filed.

¹ See Appendix 3-1, copy of complaint form

This is due, in part, to a lack of staff.²

There are a number of issues that can generate a complaint.³ Most complaints deal with obvious odors, visible violations or loud noises. If a complaint is verified by the Officer, a notice may be issued to the owner of the property. To resolve this notice, the condition must be corrected and a fine paid, if applicable.

The Officer has considerable discretion as to the assertion of fines. Compliance with the notice must be accomplished within a 30 day timetable. Staff and management acknowledged this timetable is not always met.

Many complaints are relatively easy to correct in a short time according to staff and management interviewed. This is reflected in the number of complaints that are resolved within the 30 day timetable. It was not clear to the Grand Jury exactly what the parameters are for the assessment of fines or the amount of the proposed fines. It was clear from the interviews that the issue of fines is completely at the judgment of the officers, giving the impression of arbitrary assertion of fines.

There is a lack of communication between the various divisions within P&B. None of the individuals interviewed could establish any regularly scheduled meetings between CED and other divisions of P&B. Without regularly scheduled meetings, it is very difficult to coordinate departmental actions. An issue arose concerning the vehicle pool and availability of all-wheel drive vehicles. Given the 3,506 square mile geographical area of Mendocino County, an all-wheel drive vehicle is often needed to safely access the property being investigated. Most interviewees expressed frustration with the lack of adequate vehicles.

The County does not maintain a public database, available through the internet or over-the-counter, disclosing each complaint filed. The reason given for no public access to this data is to maintain confidentiality regarding names of the complainants.

² See Appendix 3-2 – department organization chart

³ See Appendix 3-3, copy of complaint procedures

Potential Operational Changes

The backlog of complaint cases has decreased considerably over the past five years. P&B staff now reports monthly to the BOS on the status of departmental activity. The statistics in the February 2017 report, the only one available at the time of this Grand Jury report, do not balance.⁴ It is difficult to draw logical conclusions from the information given. Without a detailed action plan, it is impossible to accurately demonstrate departmental efficiency.

The monthly activity report does not specify how many complaints are over one year old. While the backlog has been significantly reduced, it has not been eliminated. The approximate remaining 300 countywide complaints will require more actions by CED. When asked how to resolve this backlog, the most frequent response from the interviewees was "...hire more Code Enforcement Officers". When searching for enforcement actions or a list of properties on which complaints have been filed, no data is available online. The staff and management interviewed could not state the exact number of outstanding complaints. There was a general knowledge of individual complaints, but a vagueness surrounding the total number.

With the BOS meetings in April 2017, new assignments are planned for CED to work in cooperation with the Agricultural Commissioner and staff to enforce the new and revised cannabis ordinances. This will require the hiring and training of additional staff.

As currently established, CED is reactive. There is language in the proposed ordinance⁵ that seems to call for CED to become an enterprise agency. If the agency is changed to an enterprise agency, the agency operations are paid for by fines and assessments arising from the enforcement activities. As an enterprise agency, the Officers would be expected to travel the County looking for code violations without having received a complaint prior to visiting a location. The end result would change the approach of CED from reactive to proactive. This change would bring CED more into the public's eye. The enforcement of code violations could also potentially change the appearance of Mendocino County as public eyesores are addressed and corrected.

⁴ See Appendix 3-4 - P&B Activity Report for February 2017

⁵ Mendocino County Code §9.30.100

There are public health issues that would be more promptly addressed by a proactive department than by responding to filed complaints. These issues are with water safety, environmental concerns, trash, and living conditions throughout Mendocino County.

At the time of this report, the CED and P&B are undergoing changes in management. The Director of P&B has been appointed as Deputy County Chief Executive Officer and the Senior Code Enforcement Officer has retired.

The position of Senior Code Enforcement Officer has been filled through an internal promotion, but three openings exist on the current staffing list.⁶ Reviewing several organizational charts over the past year, the Grand Jury did not find that the department was fully staffed at any time. Turnover of staff is an ongoing problem.

As of the date of this report, the position of Director of P&B has not been filled with a new permanent appointment. There has been an appointment of an interim Director while a search for a permanent appointee is conducted. This is yet another example of the County resorting to re-hiring retirees to fill vacant positions.

Currently, P&B is taking positive steps to streamline the permitting process. There is an online permit application program available to licensed contractors. At the time of this report, interviewees stated 20 contractors have signed up for this program. This has “significantly shortened” the time it takes to obtain a permit, according to P&B management.

Application of Code Enforcement to County Structures

The Grand Jury investigated the application of code enforcement to violations present in County operated buildings. With the passage of Mendocino County Resolution 15-161 on November 3, 2015, the BOS has changed the enforcement guidelines to include County buildings. Now, building inspectors are reviewing County buildings for various potential code violations. As violations are found, they are reported to management. Repairs are being ordered as funds are available.

⁶ Appendix 3-2 – department organization chart

There are a number of County buildings that do not comply with all of the County's various ordinances regarding environmental violations. The most notable of these violations center on water damage which resulted in mold contamination.

There are several areas of mold growth visible in the County buildings at the County Administration Building. There are a number of other County buildings with various kinds of water damage that are still in need of repair.

FINDINGS

- F1. The CED Officers have considerable discretion as to whether or not fines should be asserted. California Penal Code §829.5 states that CED officers are, "...authorized to issue citations, or file formal complaints".
- F2. The CED approach to complaints is reactive and rarely considers issues outside the parameters of the complaint.
- F3. There are insufficient appropriate vehicles directly assigned to CED to allow safe and efficient performance of the assigned tasks.
- F4. The turnover and lack of staff to conduct CED activities within Mendocino County contributes to issues not being corrected in a timely and consistent manner.
- F5. The shortage and turnover of CED management staff contributes to lack of clear direction for employees.
- F6. The backlog number of complaints has been significantly reduced to approximately 300. The validity of this number cannot be proven due to lack of publicly available documentation.
- F7. There are no online data regarding code enforcement complaints and the status of code

enforcement activity. This lack of transparency is detrimental to the efficient function of CED.

The Grand Jury finds this lack of accuracy unacceptable because it is difficult:

- to determine if a complaint has been filed on a specific property
- to know when a complaint has been corrected
- to know if there are duplicate filings of a complaint
- to have statistics to fairly assess the performance of the department
- to understand departmental operations in the interest of transparency

- F8. There are no regularly scheduled meetings between the staff of CED and the rest of P&B. This impairs the efficient function of both staffs.
- F9. There are no departmental action plans in the report given by the P&B Director to the BOS.
- F10. There is a new online program available to licensed contractors to obtain permits. In interviews it was not clear what additional changes are planned for online access by licensed contractors or the public.
- F11. The mold growth that was found is hazardous to the health of workers and citizens who frequent County facilities.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. To reduce the backlog of complaints, there is a need for additional staff in CED; the BOS discuss and consider expanding CED staff. (F2, F4-F6)
- R2. The BOS consider and discuss assigning the enterprise designation to the CED. (F2, F4)
- R3. The BOS consider assigning each CED Officer a dependable all-wheel drive vehicle. (F3)
- R4. The Director of P&B schedule at least a monthly meeting of all staff to discuss and advise on all issues concerning P&B and CED. (F8, F9)

- R5. The Director of P&B provide in the monthly report to the BOS a summary of the monthly staff meeting with action items included.(F6, F7,F9, F10)
- R6. The Department of P&B place all building and complaint actions in an online database for public access by street address and property number (APN) leaving off the name(s) of the complainant(s). (F6, F7, F10)
- R7. The BOS direct staff to bring all County facilities into compliance with applicable State and County codes within the next fiscal year, and report the result back to the BOS. (F11)
- R8. The BOS direct staff to develop and enact policies by the close of fiscal year 2018 to provide consistency in the assertion and the amount of fines for violations.(F1, F2)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individual(s):

- Mendocino County Chief Executive Officer (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *required* from the following governing body:

- Mendocino County Board of Supervisors (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *requested* from the following individual(s):

- Mendocino County Interim Director of Planning and Building Services (All Findings and All Recommendations)
- Mendocino County Deputy Chief Executive Officer (All Findings and All Recommendations)

APPENDICES:

3-1 Complaint Form

3-2 Department Organization Chart

3-3 Department Procedures

3-4 Department Activity Report

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

Appendix 3-1



MENDOCINO COUNTY
DEPARTMENT OF PLANNING AND BUILDING SERVICES
 860 NORTH BUSH STREET • UKIAH • CA • 95482
 120 WEST FIR STREET • FORT BRAGG • CA • 95437

PHONE: 707-234-6650
 FAX: 707-463-5709
 FB PHONE: 707-964-5379
 FB FAX: 707-961-2427
 pbs@co.mendocino.ca.us

COMPLAINT

CASE #: _____

SUBJECT
PROPERTY INFO Property Owner Name: _____
 Site Address or Location: _____
 Mailing Address: _____
 APN: _____ Owner Phone #: _____

DESCRIPTION OF COMPLAINT: _____

Complainant
CONFIDENTIALITY: Every effort will be made to keep the complainants identity confidential with-in the limits of existing laws.

by phone Printed Name: _____ Phone #: _____
 by mail Signature: _____ Date: _____
 in person Residence Address: _____
 emailed Mailing Address: _____
 Email _____

REFERRALS:

| | |
|---|---------------------------------|
| _____ Planning & Building Services (234-8650) | _____ Air Quality (463-4354) |
| _____ Environmental Health (234-8625) | _____ DOT (463-4363) |
| _____ Agricultural Commissioner (463-4208) | _____ Animal Control (463-4652) |
| _____ State Agency (specify) _____ | _____ Other: _____ |
| _____ None | |

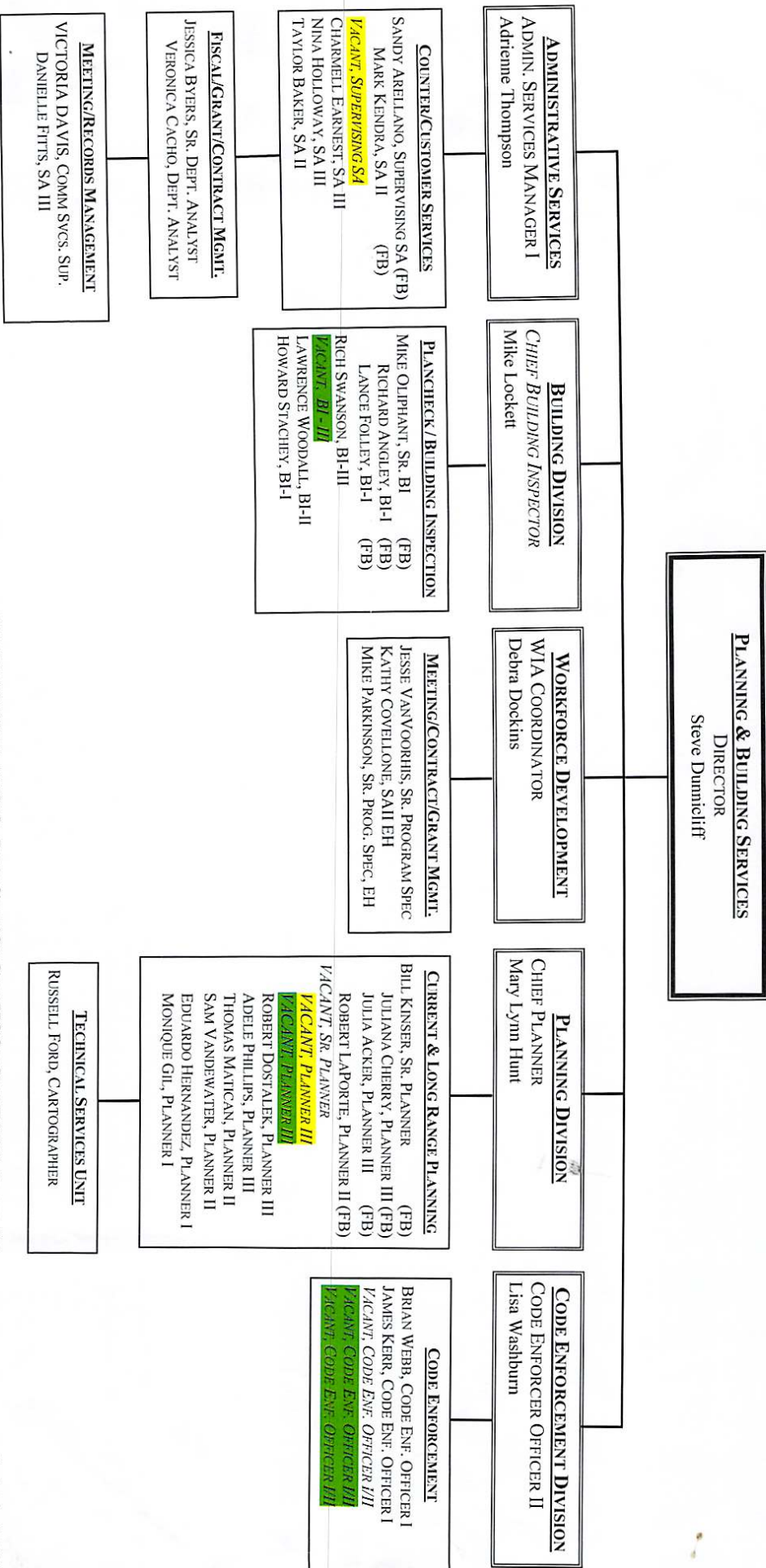
INVESTIGATION SUMMARY: (attach added sheets as necessary) Date: _____

DISPOSITION:

No violation found Referred Violation abated Date Department Closed Case: _____



Department of Planning & Building Services Organizational Chart



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Updated: 4/12/2017

APPENDIX 3-3

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CODE ENFORCEMENT DUE PROCESS AND ENFORCEMENT PROCEDURES

MENDOCINO COUNTY PLANNING AND BUILDING SERVICES

CODE ENFORCEMENT

Code enforcement personnel are responsible for enforcement of building, zoning, and stormwater discharge violations as contained in MCC chapters 18, 20, and 16 respectively. Our goal is to investigate complaints fairly and objectively while making the public's health, safety and welfare a top priority. The authority for code enforcement is contained in the California Constitution, State statutes, regulations in Mendocino County Code (MCC), and civil court law. We receive complaints from many sources, including referrals from other government agencies, members of the public and observations by Planning and Building personnel while conducting work in the field. Our objective is to resolve violations through voluntary compliance; however, the administrative and judicial tools listed in this brochure are often utilized by our officers when necessary to ensure violations are abated in a timely fashion. Typically, a Request for Inspection document is mailed to the property owner of the alleged violation to establish initial communication and schedule a time for the officer to investigate the complaint with the consent of the responsible party.

NOTICE OF VIOLATION

The Notice of Violation (NOV) is an administrative tool that serves as an initial document citing any violation(s) that were confirmed by the code enforcement officer during his visit. The first NOV typically does not include fines or penalties and allows either thirty (30), sixty (60) or ninety (90) days to correct the violation. The responsible party can contest the violation(s) cited in the NOV by following the due process procedures listed in this document itself, or other policies listed within this informative brochure.

NOTICE OF VIOLATION AND INTENT TO FILE A LIEN

The Notice of Violation and Intent to File a Lien process is utilized at the officers' discretion based upon the nature and circumstances surrounding the violation(s). It should be noted that building violation fines differ from zoning violation fines and these differences are highlighted within the NOV and Intent to File a Lien that is mailed to the responsible party. The responsible party is then given thirty (30) days to abate the violation(s) and is fined pursuant to California Government Code Section 25132. The individual can contest the violation(s) cited in the Notice of Violation and Intent to File a Lien document by following the due process procedures listed in the NOV and Intent to File a Lien itself, or other policies listed within this informative brochure.

MCC 8.75 UNIFORM NUISANCE ABATEMENT PROCEDURE

The Notice and Order to Abate (NOTA) is an administrative enforcement tool utilized by code enforcement officers to address the most egregious and long standing violations that have been declared to be a nuisance and may pose an increased threat to public health and safety. It may also be used in cases where alternative methods have not been successful in achieving compliance. Alleged violators cited under MCC 8.75 are given ninety (90) days to achieve compliance by abatement of the violations cited in the Notice and Order to Abate.

Pursuant to MCC 8.75.075 (1), for a first violation, the NOTA may impose administrative civil fines ranging from \$25.00-\$100.00/day for the ninety (90) NOTA period. Any subsequent NOTA for the same violation may impose fines up to \$500.00/day. These fines are totaled for the entire 90 day period.

There is a specific due process/appeal procedure for a NOTA that provides the alleged violator an opportunity to contest the violations cited in the NOTA (MCC 8.75.090). The alleged violator must submit a request for an appeal in writing. The request for appeal must be accompanied by an appeal fee of \$1,040.00 and be filed with the Planning and Building Services within ten (10) days of the date of issuance of the Notice and Order to Abate.