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MEMORANDUM

DATE: May 22, 2018
TO: Board of Supervisors
FROM: Michael Makdisi, Deputy County Counsel
RE: Update on Code Enforcement Activities

BACKGROUND AND SUMMARY:

In the Spring of 2017, and at the direction of the Board of Supervisors, the County dedicated a full time staff attorney to assist and support the Code Enforcement Division (“Division”). This was part of a greater effort to strengthen the Division’s functionality. A couple driving factors were the anticipated increase in cannabis related code enforcement activities and the growing need for legal support to assist the Division in taking the “next steps” in order to follow through in even the most difficult cases.

Over the last year, since my assignment to the Division, I have had the opportunity to assist the Division in many ways, such as providing daily advice and legal support regarding the implementation and interpretation of the many laws the Division enforces, including cannabis regulations. Together we have worked through many of the initial difficulties in implementing new code enforcement tools. We have resolved difficult cases, some of which had been ongoing for years. We continue to tackle those difficult and aging cases as we rebuild the institutional knowledge and practices that had fallen away over more recent years when less emphasis was given to code enforcement. This report details some of our accomplishments and expected future activities.

ACCOMPLISHMENTS AND ACTIVITIES

During the first couple months of my assignment to assist the Division, we took the steps necessary to implement the new and revised code enforcement ordinances and prepared for the first year of implementation of the new cannabis cultivation ordinances. We created new forms for noticing violations, giving administrative citations, and developed other forms such as an appeal form needed to provide due process. We entered into new contracts with new and then-current hearing officers, created a new process to appoint hearing officers, and had established better communication and coordination with respect to the use of hearing officers. By attending the Division’s weekly meetings, I had already begun the process of addressing the Divisions many questions that had been building for a long time and were ramping up on account of the new laws.

Since the beginning of the current fiscal year, starting in July 2017, my work as the assigned attorney has involved various activities. Many of these activities are difficult to quantify, and many take a significant amount of time. The following list attempts to break down some of the more significant and involved activities to provide some insight into what takes place day-to-day.

Highlights:

- Obtained a favorable decision from a hearing officer that ultimately led to code compliance on a case that had been ongoing for years
- Using the new administrative citation code enforcement tool, combined with greater follow through and access to hearing officers, assisted in negotiating an agreement to a stagnated case
- Provided advice and guidance in use of legal tools in a years old case resulting in collection of administrative penalties, compliance with many of the outstanding violations, and ongoing efforts by violator to address current outstanding violations
- Provided advice in a 20-year-old case that had not achieved compliance despite having obtained a court judgment, which is now on its way to resolution

General Advice:

- Advice regarding implementation of code enforcement ordinances, state law, and all laws that the Division enforces, including cannabis laws. This included interpretation and application of the more difficult to understand provisions of the law.
- Advise during weekly Division team meetings by addressing questions and concerns about specific cases.
- Researched and developed institutional knowledge with every new situation addressed
- Examples of topics that required legal research and guidance, some of which are ongoing:
 - o interaction between state and local laws
 - o public record act disclosure requirements
 - o enforcement and collection alternatives for administrative costs and penalties
 - o service requirements and due process
 - o right to enter for code enforcement/inspections and inspection warrants
 - o admin penalties and legal limits to use of administrative citations
 - o collection, recording, assessment
 - o summary abatement
 - o Tree removal (cannabis and non-cannabis related)
 - o Junk yards
 - o trash/refuse
 - o cultivation relocation
 - o Short term rentals
 - o accessory and temporary uses of property, such as use/storage of travel trailers
 - o implication of cannabis permit exemptions to code enforcement
 - o substandard buildings (especially those involving residents and/or children)
 - o receiverships
 - o injunctions
 - o nuisances

Hearing Officers: Developed and created the documents necessary to maintain the County's hearing officers, including the contracts for the four attorneys currently appointed

Ordinance activities:

- Ongoing identification of needed changes to the current code enforcement related ordinances, including research into best alternative provisions to suggested for change
- This list is now over five pages long, and the Division has expressed interested in turning this list into proposed changes for this Board to consider. Chapters that may see suggested changes include: Chapters 1.08, 2.76, 6.04, 8.75, 8.76, 9A.04, 10A.17, and various section within chapters 15, 16, 18 & 20

Developed and prepared necessary forms in accord with the code:

- Revised the Notice and Order to Abate (“NOTA”)
- Created the NOTA Appeal Form
- Created the Order to Show Cause and Administrative Citation for (cannabis)
- Created the Notice of Hearing for contesting Administrative Citations
- Revised the Notice of Intent to record a Notice of Violation
- Revised the document used for recording a Notice of Violation
- Assisted in developing and revising the Inspection Warrant
- Assisted in developing a compliance agreement for general use

Cannabis specific activities:

- Drafted a compliance agreement, including a separate form exhibit, and revised as requested to assist in cannabis permit issuance
- Drafted cannabis specific forms as specified above
- Advised the Division regarding the laws and their interpretation
- Developed ordinance language for cannabis code enforcement, for both cultivation and non-cultivation, including provisions to address due process, articulation of violations and consequences, as well as alternative remedies
- Consulted with other deputy attorneys regarding code enforcement implications related to cannabis ordinances
- Assisted and advised various departments and individual staff regarding code enforcement related to implementation of cannabis ordinances

Fire Debris Abatement Activities:

- Create Urgency Debris Cleanup Ordinance
- Drafted two forms for NOTAs specific to phase 1 & 2 of the fire debris abatement
- Drafted an appeal request form
- Assisted in modifying the Inspection warrants
- Advised regarding logistics, legality and implementation of the urgency ordinance
- Provided case specific analysis

Public Records Act Requests:

- Received and responded to multiple requests for code enforcement records. This required review of hundreds and hundreds of pages of documents
- Drafted a document sharing agreement for use with other agencies under Government Code section 6254.5(e)

Aging and stagnant cases (with need for continued support):

- Developing strategies for ongoing multi-year cases which have facts that make resolution difficult. Exploring ways to achieve permanent solutions in some, and working to rebuild the lost institutional knowledge necessary to resolve others, such as cases involving substandard buildings

Great strides have been made in strengthening the County's ability to enforce the code. Despite these accomplishments, much work remains. In implementing the new and revised code enforcement tools, the Division is reaching a point in many of its cases involving the more difficult and contentious violators, where administrative action alone will not suffice. To follow through, the Division will need to take court action, which will require continued and more varied legal support. Additionally, I anticipated they will need further legal support in the following manner:

- Continuing to provide legal support and advice to the Division during weekly meetings, as required daily upon request, through public records act review and in maintaining a sufficient group of appointed hearing officers
- Developing proposals to revise ordinances to improve functionality and clarity
- Exploring legal alternatives regarding substandard buildings, and assist in drafting new forms and processes to effectively address the issue
- Drafting new templates for the purpose of filing lawsuits to impose injunctions for nuisances and code violations, for collecting administrative penalties, for enforcing judgments and seeking sanctions, and for seeking receiverships
- Continuing to rebuild County's institutional code enforcement knowledge

In addition to the activities with the Division alone, we have begun working with other departments, including Transportation and Environmental Health. They have expressed interest in taking advantage of the new administrative citation ordinance as well as exploring ways to more effectively implement the various code enforcement tools specifically applicable to their departments.