



LAND USE SERVICES DEPARTMENT PLANNING STAFF REPORT



HEARING DATE: March 22, 2012

AGENDA ITEM NO: 3

Project Description:

Applicant: San Bernardino County Land Use Services Department
Proposal: Amend Title 1, Section 11.0208 and Title 8, Section 86.09.110 relative to the use of Administrative Citations
Community: Countywide
Location: Countywide
Project No: L612
Staff: Judy Tatman

BACKGROUND:

The use of Administrative Citations as an alternative to Civil Litigation or Criminal Prosecution of Title 8 violations has only existed since October 2008. Section 86.09.110 delineates the process that shall be followed when an Administrative Citation is issued. A similar code section exists in Title 1, Division 1, Chapter 2 of the San Bernardino County Code, §11.0208, and is specific to Titles 1-7.

ANALYSIS:

Historically, there has been an enforcement section in Title 1 of the San Bernardino County Code dealing specifically with Titles 1-7 and a separate enforcement section in Title 8 dealing specifically with the Development Code. As code enforcement cases are litigated through the State Courts, judgments are made that affect the way enforcement cases are handled. Changes proposed to Title 1 are heard only before the Board of Supervisors but changes to Title 8 take longer as they are required to be reviewed by the Planning Commission prior to being approved by the Board of Supervisors. This additional step to propose a change to the administrative citation procedures delays some enforcement actions unnecessarily. By removing the administrative citation section from Title 8, §86.09.110, and referencing the administrative citation section in Title 1, §11.0208, the redundancy and chance of internal conflict is eliminated. In addition, the process of keeping up with current State laws will become much simpler. Title 8 will continue to maintain the process for civil and criminal procedures as these are less subject to change.

FINDINGS:

1. The proposed amendment is consistent with the General Plan, specifically:

Action taken by the Planning Commission on this item may be appealed to the Board. Yes No
 Note: Recommendations to the Board of Supervisors are not appealable.

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- Goal LU10. Encourage distinct communities with a sense of “place” and identity; and
 - Policy H3.9. Provide targeted code enforcement programs to assist with neighborhood and housing unit rehabilitation.
2. The proposed amendment would not be detrimental to the public because it eliminates the potential for internal conflicts between Title 8 and Titles 1 through 7;
 3. The proposed amendment will ensure consistency between the Development Code (Title 8 of the County Code) and Titles 1 through 7 of the County Code; and
 4. The proposed amendments are exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA Guidelines as the proposed changes do not have the potential to cause a significant effect on the environment.

RECOMMENDATION: THE PLANNING COMMISSION RECOMMENDS THAT THE BOARD OF SUPERVISORS:

- A. ADOPT the proposed amendments to the County Code Title 8.
- B. ADOPT the findings as contained in the staff report;
- C. FILE the Notice of Exemption.

ATTACHMENTS:

Exhibit A: Proposed Development Code Changes
Exhibit B: Notice of Exemption

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EXHIBIT A

PROPOSED DEVELOPMENT CODE CHANGES

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86.09.110 Administrative Actions

As an alternative to the criminal or civil enforcement of this Development Code, i.e., Title 8 of the San Bernardino County Code, and, further, as an alternative to all other administrative enforcement procedures provided by this Development Code, all violations of this Development Code may be subject to enforcement through the use of Administrative Citations in accordance with Government Code § 53069.4 and this Section, and in the same manner and under the same authority as provided at §11.0208 of the San Bernardino County Code.

- ~~(a) **Application.** All violations of any provision of this Development Code or any permit or land use approval granted pursuant thereto are subject to enforcement through the use of administrative citations in accordance with Government Code Section 53069.4 and this Section. The following procedures shall govern the imposition, enforcement, collection, administrative, and judicial review of administrative citations and penalties.~~
- ~~(b) **Content of Citation.** The administrative citation shall be issued on a form approved by the County Administrative Officer in consultation with County Counsel. The administrative citation form may be tailored to the specific needs of the issuing department as approved by the County Administrative Officer, however, all administrative citations regardless of the issuing department shall contain the following information:~~
- ~~(1) The administrative citation shall refer to the date and location of the violation and the approximate time, if applicable, that the violation was observed.~~
 - ~~(2) The administrative citation shall identify each violation by the applicable section number of this code and by either the section's title or a brief descriptive caption; or by reference to the applicable permit or land use approval and describing the condition violated.~~
 - ~~(3) The administrative citation shall describe the action required to correct the violations.~~
 - ~~(4) The administrative citation shall require the responsible party to immediately correct the violation and shall explain the consequences of failure to correct the violation.~~
 - ~~(5) The administrative citation shall state the amount of the penalty imposed for the violation. Multiple violations may be listed on the same citation form. In the event of multiple violations, the administrative citation shall list the penalty amount for each violation and the total amount of all of the penalties.~~
 - ~~(6) The administrative citation shall contain a notation box for the enforcement officer to indicate whether or not the citation is issued as a "warning only" and without penalty. The administrative citation shall also include a notation box for~~

- ~~— the enforcement officer to indicate that the penalty will be waived if the violation is corrected by the compliance deadline date indicated on the citation form.~~
- ~~(7) The administrative citation shall explain how the penalties shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty within this time period.~~
- ~~(8) The administrative citation shall identify all appeal rights and instructions on how to appeal the citation.~~
- ~~(9) The administrative citation shall contain the printed name and the signature of the enforcement officer and the signature of the responsible party, if he/she can be located, as set forth in subsection (e) below.~~

~~(e) **Service of Citation.**~~

- ~~(1) If the responsible party is present at the scene of the violation, the enforcement officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.~~
- ~~(2) If the responsible party is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to them. If the enforcement officer is unable to serve the business owner on the premises and the enforcement officer can only locate the manager or on-site supervisor, the administrative citation may be issued in the name of the business and a copy given to the manager or on-site supervisor. A copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested and by first class mail. If a copy of the administrative citation that is sent by certified mail is returned by the United States Postal Service unsigned or marked “unclaimed” and/or “refused”, then service by first class mail shall be deemed effective provided it is not returned by the United States Postal Service.~~
- ~~(3) If no one can be located at the property, then a copy of the administrative citation shall be posted in a conspicuous place on or near that property and a copy mailed by certified mail, return receipt requested and by first class mail, to each responsible party at their last known addresses as they appear on the last County equalized assessment role, or other available public records related to title or ownership of the property that is the subject of the administrative citation. If the copy of the administrative citation sent by certified mail to a responsible party is returned by the United States Postal Service with the mail receipt unsigned, or marked “unclaimed” and/or “refused”, then service by first class mail shall be deemed effective provided it is also not returned by the United States Postal Service.~~
- ~~(4) The failure of any responsible party to receive a copy of the administrative citation shall not affect the validity of the proceedings.~~

~~(d) Administrative Penalties.~~

- ~~(1) Unless otherwise provided in this code, the amount of penalty to be imposed for a violation of this code and assessed by means of an administrative citation shall be one hundred dollars (\$100.00) for the first occurrence of a violation; two hundred dollars (\$200.00) for the second occurrence of the same violation occurring on the same property; and five hundred dollars (\$500.00) for the third and each subsequent occurrence of the same violation occurring on the same property. Notwithstanding this paragraph, the amount of penalty to be assessed by means of an administrative citation may be established by resolution of the Board of Supervisors.~~
- ~~(2) If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.~~
- ~~(A) Payment of the penalty shall not excuse failure to correct the violation nor shall it bar further enforcement action by the County.~~
- ~~(B) The penalties assessed shall be payable to the County within 30 calendar days from the date the administrative citation is issued.~~
- ~~(C) Except as provided below, any person who fails to pay to the County any penalty imposed pursuant to the provisions of this Chapter on or before the date that the penalty is due shall also be liable for the payment of any applicable late payment charges as established by the Board.~~
- ~~(D) The County may collect any past due administrative citation penalty or late payment charge by use of any available legal means, including without limitation, the filing of a notice of lien, describing the real property affected and the amount of the costs, penalties or damages to the County Auditor, who shall place the amount thereof on the assessment role as a special assessment to be paid with County taxes, unless sooner paid. The County may also recover its collection costs. A judgment or award of such costs, penalties or damages may also be enforced in other manner provided by law.~~
- ~~(E) The County may also recover administrative costs for defending the citation at the appeal hearing.~~

~~(e) Appeal of Administrative Citation.~~

- ~~(1) **Notice of Appeal.** A responsible party may appeal the administrative citation by filing a written notice of appeal with the department that issued the administrative citation. The written notice of appeal must be filed within 20 calendar days of the date the administrative citation was served in a manner set forth in subsection (d) of this Section. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the~~

- ~~— administrative citation. The notice of appeal shall be submitted on County forms and shall contain the following information:~~
- ~~(A) A brief statement setting forth the appealing responsible party's (hereinafter appellant) interest in the proceedings;~~
 - ~~(B) A brief statement of the material facts, which the appellant claims supports their contention that no administrative penalties should be imposed or that an administrative penalty of a different amount is warranted under the circumstances;~~
 - ~~(C) An address at which the appellant agrees that notice of any additional proceeding, or an order relating to the imposition of an administrative citation penalty, shall be received by the appellant by mail;~~
 - ~~(D) The notice of appeal must be signed by the appellant.~~
- ~~(2) **Administrative Hearing.** Upon a timely, written notice of appeal by the appellant, an administrative hearing shall be held as follows:~~
- ~~(A) **Hearing Date.** The date of the hearing shall be set for a date that is no later than 60 days from the date of the violation.~~
 - ~~(B) **Notice of Hearing.** Notice of the administrative hearing shall be given at least 10 calendar days before the hearing to the appellant. The notice may be delivered to the appellant or mailed by first class mail to the address listed in the notice of appeal.~~
 - ~~(C) **Hearing Officer.** The administrative hearing shall be held before the director of the issuing agency or his/her designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or their immediate supervisor. The director of the issuing agency may contract with a qualified provider to conduct administrative hearings and process administrative citations including the collection of payment of administrative citation penalties and processes.~~
 - ~~(D) **Conduct of the Hearing.**~~
 - ~~(1) The enforcement officer who issued the administrative citation shall not be required to participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. The issuing department shall bear the burden of proof at the administrative hearing to establish the existence of a violation of this code by a preponderance of the evidence.~~

- ~~(II) If the appellant requesting the review fails to appear at the administrative hearing, the hearing officer shall make their determination based on the information contained in the enforcement officer's file in the case and the appellant's notice of appeal.~~
- ~~(III) The only evidence that shall be permitted at the administrative hearing and considered by the administrative hearing officer in reaching a decision, is that evidence which is relevant to the proof or disproof of:~~
- ~~(i) Ownership of the subject property, when applicable;~~
 - ~~(ii) Whether a person noticed by the issuing department as a responsible party is, in fact, a responsible party;~~
 - ~~(iii) Whether a violation of this code occurred and/or continues to occur on the date or dates specified in the administrative citation;~~
 - ~~(iv) Whether the responsible party has committed, caused, maintained, or permitted a violation of this code on the date or dates specified on the administrative citation.~~

~~(f) Hearing Officer's Decision.~~

- ~~(1) After considering all the testimony and evidence submitted at the hearing, the hearing officer shall promptly issue a written decision ("Administrative Citation Appeal Ruling") to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision.~~
- ~~(2) If the hearing officer determines that the administrative citation should be upheld, then the amount of the penalties set forth in the citation shall not be reduced or waived for any reason. This subsection shall not apply to "warning only" administrative citations or to any administrative citation that indicates on its face that the penalty will be waived if the violation is corrected by the deadline compliance date and the violation is so corrected.~~
- ~~(3) If the administrative citation has been upheld, the hearing officer may allow payment of the administrative penalty in installments, if the appellant has provided evidence satisfactory to the hearing officer of an inability to pay the penalty in full.~~
- ~~(4) If the hearing officer denies the administrative citation, then no penalty shall be assessed and any penalty otherwise deposited with the issuing department shall be promptly refunded to the appellant.~~
- ~~(5) The appellant shall be served with a copy of the hearing officer's written decision either at the conclusion of the hearing or sent by first class mail. The hearing officer's written decision shall become final on the date of the hearing unless mailed; otherwise it shall become final on the date of mailing.~~

- ~~(6) The hearing officer's written decision shall contain instructions for obtaining judicial review of the decision pursuant to California Government Code Section 53069.4, as that section may be from time to time amended, or the successor provision thereto.~~
- ~~(7) If the administrative citation is upheld, the Hearing Officer shall award the costs of the County's enforcement costs and costs in defense of the citation to the county as outlined in full in an itemized summary of costs presented at the hearing, including cost of the actual time spent to conduct the hearing.~~

~~(g) **Judicial Review of Administrative Hearing Officer's Decision.**~~

- ~~(1) **Notice of Appeal.** Within 20 calendar days of the date of the delivery or mailing of the hearing officer's decision to the appellant, the appellant (hereafter "contestant") may contest that decision by filing an appeal to be heard by the Superior Court, and paying the filing fee set forth at Government Code Section 53069.4, or the successor provision thereto. The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. The contestant shall serve a copy of the notice of appeal in person or by first class mail upon the county department that had issued the original administrative citation.~~
- ~~(2) **Conduct. The Superior Court Appeal Hearing.** The conduct of the appeal before the superior court is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officers at the direction of the presiding judge at the superior court. The appeal shall be heard de novo, except that the contents of the issuing department's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty (i.e., the administrative citation) shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing department's file in the case be forwarded to the court, to be received within 15 calendar days of the request.~~
- ~~(3) **Judgment.** The court shall retain the filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the issuing department. Any deposit of the administrative penalty shall be refunded by the issuing department in accordance with the judgment of the court. If the administrative penalty has not been deposited and the decision of the court is against the contestant and in favor of the issuing department, the issuing department may proceed to collect the penalty pursuant to the procedures set forth in this Chapter, or in any other manner provided by law.~~

Adopted Ordinance 4011 (2007); Amended Ordinance 4043 (2008); Amended Ordinance 4057 (2008); Amended Ordinance XXXX (2012)

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EXHIBIT B

NOTICE OF EXEMPTION

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Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: County of San Bernardino
Land Use Services Department
Planning Division
385 North Arrowhead Avenue, 1st Fl.
San Bernardino, CA 92415-0182

Clerk of the Board of Supervisors
County of San Bernardino
385 North Arrowhead Avenue, Second Floor
San Bernardino, CA 92415-0130

Project Description

Proposal: An ordinance to amend Title 8 Section 86.09.110 of the County Code relative to the use of Administrative Citations, and to amend Title 1 to add reference to Title 8 in Section 11.0208.

Community: Countywide
Location: Countywide
Project No: L612

Applicant

County of San Bernardino
Land Use Services Department

385 N. Arrowhead Ave., First Floor
Address

San Bernardino, CA 92415-0182

(909) 387-4180
Phone

Representative

Judy S. Tatman, Supervising Planner
Name

Same as Applicant
Address

Judy S. Tatman, Supervising Planner
Lead Agency Contact Person

(909) 387-4180
Area Code/Telephone Number

Same As Applicant
Phone

Exempt Status: (check one)

- Ministerial [Sec. 21080(B)(1); 15268];
- Declared Emergency [Sec. 21080(B)(3); 15269(a)];
- Emergency Project [Sec. 21080(B)(4); 15269(b)];
- Categorical Exemption. State type and section: Review of Exemption § 15061(b)(3)

- Statutory Exemptions. State code number: _____
- Other Exemption: _____

Reasons why project is exempt: This proposed ordinance is only eliminating duplicate language within the County Code and no change is being made in how citations are issued. Therefore, it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Thus, the project is exempt from the requirements of CEQA pursuant to state CEQA Guidelines §15061(b)(3).

Signature

Title

Date

Signed by Lead Agency Signed by Applicant

Date received for filing at OPR: _____

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