

MEMORANDUM

TO: Mayor and Members of the City Council
Chair and Members of the Planning Commission

COPIES: Executive Team

FROM: James C. Hardy, City Manager *JCH*

DATE: February 13, 2007

SUBJECT: CODE ENFORCEMENT POLICY AND BUSINESS PRACTICES

Attached is a copy of a Code Enforcement Policy and Business Practices document prepared by Community Development Director Rick Marks for use by City staff involved in code enforcement activities. With a new Assistant Planner, whose primary responsibility is code enforcement, starting next week, Rick prepared this comprehensive document to guide his and other City staff in their code enforcement duties and responsibilities.

If you have any questions about the attached document, please contact Rick Marks or me.

Attachment:

- City of Foster City / Estero Municipal Improvement District Code Enforcement Policy Number CE-01-07 - Dated February 5, 2007

City of Foster City/Estero Municipal Improvement District Policy
Code Enforcement

Subject: Code Enforcement

Policy Number: CE-01-07

Effective Date of Policy: February 5, 2007

Background and/or Problem Statement:

Foster City was originally designed and built as a master planned suburban community, and has historically been concerned with protecting the appearance and quality of its natural and built environment. In order to mitigate the financial costs of building on bay-filled land and the associated additional costs of meeting the City's architectural and aesthetic concerns, higher-than-typical San Francisco Bay Area suburban densities for residential and commercial buildings and developments have historically been allowed. While higher density development is very compatible with suburban living, communities developed in this manner require a close and ongoing attention to the development, use, and improvement of residential and business property; to the delivery of critical public services; to the maintenance of public infrastructure; and to the overall protection of public health, safety and welfare.

As governmental entities, the City/District have the legal responsibility to enhance and protect the health, safety and general welfare of the people who live, work and visit within their boundaries. The City also has the primary responsibility for preserving and enhancing the value of residential and business property within the City limits. The State of California has authorized General Law cities and special districts to enact such ordinances and regulations as they deem appropriate in order to meet these responsibilities, so long as those ordinances and regulations are not in conflict with the general laws of the State.

In order to meet its legal obligations, the City/District has enacted a number of ordinances which regulate the use, design, construction, and maintenance of buildings and property. These ordinances are intended to strike a fair and legal balance between meeting its important, long-standing community goals of protecting and enhancing the natural and built environment; protecting the property rights of residential and business property owners; encouraging the development of new housing and businesses in the City/District; mitigating any detrimental impacts of new land use development on existing land uses and mitigating any detrimental impacts of existing land uses on one another; regulating the use of water in times of drought or water shortages; and other health, safety and public welfare related ordinances and regulations.

It is the purpose of the City/District's code enforcement efforts to ensure that these ordinances and regulations are complied with or that compliance is gained in a manner acceptable to the City/District and within a reasonable period of time.

Purpose of Policy:

1. To ensure that approved enforcement procedures and methods are consistently followed and applied irrespective of who on staff is charged with the enforcement of property related ordinances and regulations.

2. To ensure to the extent possible that all persons and businesses who are the subject of City/District enforcement efforts and procedures are treated in a fair, legal and consistent manner.

POLICY:

Authorization for Policy

Constitution of the State of California: Article XI, Section 7, of the Constitution of the State of California.

Foster City Municipal Code: Sections 2.04.070; 2.04.080; 2.04.210 of Chapter 2.04, City Manager, of Title 2, Administration and Personnel, of the Foster City Municipal Code.

Estero Municipal Improvement District Code: Section 2.12.010 of Chapter 2.12, General Manager, of Title 2, Administration and Personnel of the Estero Municipal Improvement District Code.

Enforcement Officer

Section 17.06.040, of Chapter 17.06, Administration, Construction, and Enforcement, of Title 17, Zoning, of the Foster City Municipal Code establishes the (Community Development) Planning Director or the director's designee as the code compliance enforcement officer for this Title of the Municipal Code. Additionally, consistent with the authority granted to the City Manager/General Manager, the Community Development Director or the Director's designee shall enforce all sections of the Foster City Municipal Code, the Estero Municipal Improvement District Code and all other regulations of the City/District as directed or authorized by the City Manager/General Manager.

Relevant City of Foster City Ordinances and Regulations

- Title 1, General Provisions, Section 1.08.040, General Penalty—Continuing violations, Foster City Municipal Code.
- Title 6, Animals, Foster City Municipal Code.
- Title 15, Buildings and Construction, Foster City Municipal Code.
- Title 17, Zoning, Foster City Municipal Code.
- Title 9, Public Peace, Morals and Welfare, Chapter 9.52, Property Maintenance, Foster City Municipal Code.
- All discretionary permits issued by the City of Foster City.

Relevant Estero Municipal Improvement District Ordinances and Regulations

- Title 6, Health and Safety, Estero Municipal Improvement District Code.
- Title 8, Water and Sewer Service, Chapter 8.60, Water Conservation and Rationing, Estero Municipal Improvement District Code.
- All discretionary permits issued by the Estero Municipal Improvement District.

Guiding Principles

Because of the very sensitive nature of code enforcement, especially those cases involving residential property maintenance issues that may not directly affect health and safety but do

directly affect the appearance of neighborhoods and value of property in the City/District, code enforcement matters must be handled carefully and with a focus on the following principles:

- Many code enforcement cases arise due to a property owner's or business owner's/operator's lack of experience with or knowledge about an ordinance or regulation—inadvertently, not advertently.
- Prior to contacting a property owner or business owner/operator, there must be a clear legal basis for initiating contact. As an example, the fact that one property owner in a neighborhood does not like the appearance of something on the property of their neighbor does not constitute grounds for initiating contact with the property owner against whose property the complaint has been lodged. Authorized City/District staff should first conduct a field investigation to determine whether in fact a legal infraction exists, and if so, only then make contact with the subject property owner. If there is no violation of City/District law, no contact should be initiated with the subject property owner.
- The “tone and style” of staff contact with property owners or business owners/operators should always be respectful and courteous. Receiving a property maintenance or code compliance letter from the City/District can be a very emotional experience for a property owner or business owner/operator, and angry responses are not unusual. Staff must do its best to remain calm, be informative and helpful, and attempt to diffuse the emotions at-hand.
- Code enforcement matters require perspective and judgment; not all cases can be handled in exactly the same manner. Staff must keep its focus on resolving the matter in a reasonable time and manner consistent with applicable ordinances or regulations but, to the extent possible, in a way that is also reasonable for the property owner or business owner/operator.

Case Processing

There are several ways in which a code compliance matter is initiated and/or brought to staff's attention. They are as follows:

- Cases initiated by the City Council/Estero Municipal Improvement District Board of Directors.
- Cases initiated by the Planning Commission.
- Cases initiated by citizens and/or business owners/operators.
- Cases initiated by City/District staff.
- Cases initiated by other governmental agencies.

Complaint Investigation Priorities

Complaints received or conditions/problems discovered by staff shall be investigated and processed based the following priorities:

Priority 1: Conditions/problems or alleged problems that pose an immediate or serious risk to the health, safety or welfare of the public. Examples include unsafe buildings, unsafe building practices, excessive noise, anything interfering with the safe flow of vehicular and pedestrian movement, and enforcement of the EMID Code/Water Conservation and Rationing Ordinance.

Priority 2: Conditions/problems or alleged problems that are not presently a risk or danger to the health, safety or welfare of the public, but which can be expected to be in a short period of

time. Examples include some kinds of illegal building construction and serious property maintenance problems.

Priority 3: Conditions/problems or alleged problems which are not expected to pose a threat to the health, safety and welfare of the public but which may negatively affect the appearance of the City/District or cause undesirable impacts or consequences to residents, businesses and/or property. Examples include construction of illegal or un-permitted yard structures or property improvements, the illegal use of property, abatement of illegally parked (but not unsafely parked) vehicles on public streets and, abatement of illegal or un-permitted signs.

Complaint/Case Intake

- A complaint is received from a citizen, a member of the City Council/Estero Municipal Improvement District Board of Directors, a member of the Planning Commission, a businessperson, a member of the City/District staff, (other than from the Community Development Department) or another public agency either by telephone, postal mail, electronic mail or in person. If the information is received in person or by telephone, basic data is logged onto an intake form; if the complaint is received by postal or electronic mail, the complaining party is contacted (if possible – some complaints are anonymous) and basic data is logged onto an intake form. Once information has been recorded, the form is sent to the staff person assigned to handle code enforcement cases, typically but not always, the Assistant Planner.
- The staff assigned to the case or a member of the clerical staff logs the complaint into the HTE program/AS400/computer, a case file number is assigned, a file is set up, and the case is sent back to the staff assigned to handle it.
- The complaint is verified in-the-field by the staff person assigned to the case in order to ascertain whether in fact a violation of the Municipal or District Codes has occurred (some complaints received are false; some are concerns of the complaining party but are not actual violations of the Municipal or District Codes).
- Based on the in-the-field inspection by staff, a determination is made regarding whether a violation of the Municipal or District Codes has occurred and if so, what the City/District's response ought to be. If no violation of the Municipal or District Codes has occurred, the matter is dropped and the case is closed without contacting the property owner or resident against whom the complaint was made. If it is determined that a violation of the Municipal or District Codes has occurred, the City/District becomes the official complaining party and contact is made with the property owner (owner occupied house) or both the resident and property owner (renter occupied house), or the business, by postal mail.
- If requested, the complaining party is notified of the City's determination and proposed abatement actions regarding the complaint and invited to periodically call or send e-mail requests for updates.

First Letter/Contact

- If it is determined that a violation of the Municipal or District Codes has occurred, the first of a series of 3 "standard letters" (fill-in-the-blanks) is sent to either the property owner (owner occupied house) or both the resident and property owner (renter occupied house). The person(s) receiving the letter is/are asked to contact the City/District to discuss (not necessarily resolve) the matter within the "next week" of the date of the letter.

- If the person(s) receiving the first letter responds within the requested time frame, staff attempts to define the problem, explain why the matter is a concern to the City/District, and work out a time frame for resolving the matter with the responding party. If it is possible to work out a resolution, the responding party and staff agree upon a time frame to bring the property or sign into conformance with the Municipal or District Codes.
- If the property owner or business does not contact the staff, at the end of a week, staff will visit the property or business to determine whether code compliance has been achieved. The property or business is re-inspected one business day after the date the violation was supposed to have been abated. If compliance has been attained, a "thank you" letter is sent to the property owner and resident (if applicable) and the case is closed.
- If the person(s) or business to whom the letter(s) was sent does not reply within one (1) week of the date on the letter sent by the City/District and if code compliance has not been achieved, a second letter is sent.

Second Letter/Contact

- The second standard letter sent to either a property owner and/or a renter or a business requests that the violation be resolved and brought into compliance within two (2) weeks of the date on second letter and states that if it is not, further action will be taken by the City/District.
- If a second letter is sent to a property owner and/or a renter or a business and contact is made with the City/District, staff attempts to define the problem, explain why the matter is a concern to the City/District, and work out a time frame for resolving the matter with the responding party. If it is possible to work out a resolution, the responding party and staff agree upon a time frame to bring the code violation into conformance with the Municipal or District Codes.
- The property is re-inspected one business day after whatever date is agreed to between the responding party and staff in order to verify that compliance has been attained. If compliance has been attained, a "thank you" letter is sent to the property owner and the case is closed. If compliance has not been attained by the date agreed upon, a third letter is sent to the appropriate person(s).
- If the person(s) to whom the second standard letter was sent does not reply within two (2) weeks of the date on the second letter sent by the City/District, a third letter is sent to the appropriate person(s). If code compliance has been attained but no contact with the City/District has ensued, the case is closed and a "thank you" letter is sent to the property owner and resident (if applicable) and the case is closed.

Third Letter/Contact

- If a third letter is sent to either a property owner and/or a renter or a business and contact is made with the City/District, staff attempts to define the problem, explain why the matter is a concern to the City/District, and work out a time frame for resolving the matter with the responding party. If it is possible to work out a resolution, the responding party and staff agree upon a time frame to bring the property or sign into conformance with the Municipal or District Codes. The property is re-inspected one business day after whatever date is agreed to between the responding party and staff in order to verify that compliance has been attained. If compliance has been attained, a "thank you" letter is sent to the property owner and the case is closed.
- If the person(s) or business to whom the letter was sent does not reply within one (1) week of the date on the third letter sent by the City/District and if code compliance has

not been achieved, a memorandum outlining the matter is prepared, copies of relevant letters and notes are attached and the matter is turned over to the City Attorney/District Legal Counsel for prosecution. If code compliance is attained but no contact with the City/District has ensued, the case is closed and a "thank you" letter is sent to the property owner and resident (if applicable) and the case is closed.

At any point in the above process, any diversions from the language contained in the standard letters or requests for time extensions to complete work in order to achieve code compliance must be approved by the Community Development Director.

The following table summarizes the abatement process prior to referral to the City Attorney/District Legal Counsel:

<i>Letters Sent by City/District</i>	<i>Time in which to Respond</i>	<i>If No Response to Letter or No Abatement Action Taken</i>
First of Three	Seven (7) Days from the Date of the Letter	Second Letter Sent
Second of Three	Fourteen (14) Days from Date of the Letter	Third Letter Sent
Third of Three (Last)	Seven (7) Days from the Date of the Letter	Referral to the City Attorney/District Legal Counsel

Referral to City Attorney/District Legal Counsel

After a total of three (3) letters have been sent regarding a violation of the EMID and/or City Municipal Code, the Community Development Director shall determine whether the matter shall be referred to the City Attorney/District Legal Counsel for the purpose of filing a legal complaint with the San Mateo Superior Court. If the Community Development Director believes that the matter involves unusual or sensitive issues, he or she may review the matter with the City Manager/General Manager prior to referral to the City Attorney/District Legal Counsel.

The City Attorney/District Legal Counsel shall review the facts of the matter, all enforcement actions taken by the staff of the Community Development Department and prepare a demand letter. The demand letter shall outline the nature of the violation and staff's attempts to obtain voluntary compliance. The letter shall demand compliance with the City/District ordinance within 10 days and advise that if compliance does not occur within 10 days, litigation will be filed. Finally, the letter shall include language alerting the property owner to the fact that if litigation is filed, the City/District will request that attorney's fees be awarded to the City/District.

The City Attorney/District Legal Counsel shall advise the Community Development Director whether a legal complaint will be filed, whether the complaint will be civil or criminal, and whether or not conditions exist which would indicate that temporary injunctive relief will need to be requested. If a civil complaint is filed, the City/District will request that the court issue an injunction ordering the property owner to bring the property into compliance with the City/District's ordinances and that the court also award the City/District attorneys fees.

At any point after a complaint has been filed with the court, if the defendant has taken corrective action fully abating the subject violation to the satisfaction of the Community Development Director, unless there are special circumstances that warrant continuing legal action, the complaint will be dismissed.

At any point after a complaint has been filed with the court, if the defendant offers to take corrective action that is determined to be satisfactory by staff of the Community Development Department, a settlement agreement shall be drafted by the City Attorney/District Legal Counsel outlining how and when the violation will be abated. Failure by the defendant to meet all obligations of the settlement agreement by the dates agreed upon will result in a Judgment in favor of the City/District ordering the property owner to correct the violations and to pay the City/District's attorneys fees as required by Foster City Municipal Code Section 1.08.040.

After a legal complaint has been filed by the City/District, the City/District and the defendant may enter into a written Settlement Agreement which states, among other items, the terms of the Agreement and the defendant's immediate, continuing and long-term obligations.

If the defendant repeats the violation within 12 months of the date on the last correspondence sent to them by the City/District, a warning letter shall be sent to them offering them 10 days from the date of that letter in which to correct the violation to the satisfaction of the City/District. If they fail to correct the violation, the Community Development Director shall determine whether the matter shall be turned over to the City Attorney/District Legal Counsel for the purpose of filing a legal complaint. If the Community Development Director determines that the matter involves unusual or sensitive matters, he or she may review the matter with the City Manager/General Manager.

If the defendant repeats the violation after a period of 12 months from the date on the last correspondence sent to them by the City/District, the matter shall be treated as a new violation and abatement of the violation shall be subject to the procedures stated above.

Record Keeping

Code enforcement case records should be kept in a neat and organized manner in a master file. Files may be used during the business day and temporarily placed on the enforcement officer's desk but should be returned to the master file and filing cabinet at the end of each business day. This is important because in the event that the enforcement officer assigned to the case is not in the office on a day when the information in the case file is needed, it is important for other Department staff to be able to easily and quickly retrieve the information/file. Case files should contain all of the information relevant to the case, including correspondence sent and received, electronic mail sent and received, filed investigation and other case notes, and photographs. Information or correspondence sent to or received from the City Attorney/District Legal Counsel shall be kept separately within the master file, inside a sealed envelope stamped with the word "confidential" in several places on the exterior.

The Department has developed standard forms for recording initial case information, contact with property owners, and for recording correspondence sent. These forms, along with other records, should be kept in the code enforcement case file at all times.

All information in the code enforcement case files is subject to the City/District's code enforcement case file confidentiality policy (see below).

Confidentiality

It is the policy of the City Council and the Estero Municipal Improvement District Board of Directors, based upon the advice of the City Attorney/District Legal Counsel, that the names of

persons filing complaints with the City/District regarding violations or possible violations of City/District ordinances will not be disclosed to any member of the public, including the person(s) whose property is alleged to contain the violations or any person who is alleged to be violating City/District ordinances without a court order requiring disclosure. The reasons for this policy are as follows:

- Disclosure may lead to retaliatory actions against the safety or property of the person filing the complaint or to other forms of harassment.
- Disclosure may discourage the filing of complaints regarding problems or circumstances which affect the public health, safety and welfare of City residents, people employed in the City and/or property owners.
- Disclosure is not necessary because no official complaint or contact will be made between the City/District and a property owner whose property is alleged to contain violations of any person who is alleged to be violating City/District ordinances until an authorized and knowledgeable member of the City/District staff is dispatched to investigate the situation and determine whether a violation has or may have occurred. If it is determined that a violation of a City/District ordinance has or may have occurred, official contact will be made with the person(s) responsible and the City/District will become the complainant. If it is determined that a violation of a City/District ordinance has not occurred, no contact with the person(s) alleged to have violated the provisions of an ordinance will be made. If it cannot be determined whether a violation of an ordinance has occurred, the City/District may send a warning letter to the person(s) responsible.

In order to protect the confidentiality of persons filing complaints with the City/District regarding violations or possible violations of City/District ordinances, complete access to files containing City/District records and all of the information regarding the complaint and related information developed by the City/District shall be restricted to the following people:

- City Manager/General Manager
- City Attorney/District Legal Counsel
- Community Development Director
- Other staff assigned to work on the matter by either the City Manager/General Manager or the Community Development Director
- Members of the City Council/Estero Municipal Improvement District Board of Directors upon authorization of the City Manager/General Manager, the City Attorney/District Legal Counsel or the Community Development Director
- Persons authorized by a Court of competent jurisdiction

Information contained within the files that is not confidential in nature may be reviewed by the public in response to a Public Records Act request, or discussed with members of the public or persons who have violated or are alleged to have violated a City/District ordinance, Monday through Friday (except legal City holidays) between 8:00 a.m. and 5:00 p.m. or by other arrangements, under the following conditions:

- The subject files have been reviewed by an authorized member of the City/District staff and all references to the name, address or other information capable of identifying a complainant, other than the City/District, has been removed; members of the staff authorized to review files prior to review by persons other than described above, include the City Manager/General Manager, City Attorney/District Legal Counsel, Community Development Director or his/her designee.

- The information is not marked as "confidential".
- The information is not protected by the legal principle of attorney/client privilege.

Anonymous Complaints

Anonymous complaints are sometimes legitimate and submitted by well intentioned people who simply fear retaliation from the person or parties against whom the complaint has been lodged. However, anonymous complaints are sometimes motivated by neighbor conflicts unrelated to code violations. Because of the potential for abuse, anonymous complaints should be handled very cautiously.

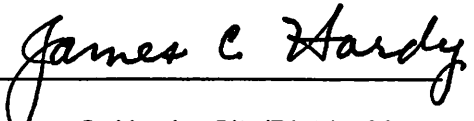
Anonymous complaints alleging problems or conditions that pose a risk to public health, safety or welfare will be handled as a priority 1 or priority 2 type of complaint, as appropriate. Other anonymous complaints will be handled as deemed appropriate by the Community Development Director.

Policy Supersedes All Others:

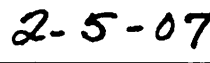
This policy shall become effective immediately and supersede all other policies.

ATTACHMENT

Code Enforcement Business Practices



James C. Hardy, City/District Manager



Date

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City of Foster City/Estero Municipal Improvement District Code Enforcement Business Practices

- Develop a code enforcement policy and periodically review the policy with the City/District Manager.
- Code enforcement files frequently contain confidential information and are therefore not open to the public. If a person insists on viewing the contents of a file, call the City Attorney/District Legal Counsel for advice prior to allowing a member of the public to view the contents of the file.
- Develop a code enforcement notebook that contains all code enforcement business practice information (the notebook should be a reference for existing staff and a training manual for new staff). Keep the notebook in an area that is known by and accessible to all Department staff so that it can be reviewed irrespective of which staff is on duty.
- Train several members of the Department's staff in code enforcement techniques and practices.
- Successful code enforcement requires organization. Keep office and work areas neat and organized.
- Keep files in a neat, organized manner at all times. Case files must contain all of the information relevant to a particular case.
- Keep code enforcement case files in a single location known by and accessible to all Department staff so that file information can be quickly retrieved irrespective of which staff is on duty.
- A Code Compliance Investigation Report (copy attached) must be completed for and placed in every enforcement case file. All information must be neatly written in, especially information on the top portion of the form.
- Keep neat, accurate notes about all conversations (telephone; person-to-person; other) between staff and any person during which a code enforcement matter is discussed. Place a copy of all notes in the appropriate case file.
- Keep neat accurate notes regarding all field or site investigations of property. Place a copy of all notes in the appropriate case file.
- Keep all relevant original correspondence and documents received and/or copies of all correspondence sent in the appropriate case file.
- Do not write on original documents, including but not limited to letters, electronic mail, postal mail, and reports.
- Do not re-inspect a property or a problem on the day that something was to be accomplished; wait until one (1) business day later in order to give the responsible party the full amount of time to achieve compliance (EX. If the front yard of a property was to be re-planted by May 1st, do not re-inspect the yard until May 2nd or the next business day).
- Routinely review existing ordinances in light of recent enforcement experiences to determine whether amendments (or new ordinances) are required.
- Work closely with the Foster City Chamber of Commerce when revising or proposing ordinances that affect businesses and in order to stay abreast of business concerns in the City.
- Develop and periodically update "standard enforcement letters" for all typical enforcement issues that can be easily completed to fit site or event specific circumstances.
- When developing or amending "standard letters", ask the City Council/Estero Municipal Improvement District Board of Directors, the Planning Commission and

- the Chamber of Commerce (letters to businesses only) to review them and to offer comments.
- Work closely with Police Department.
 - Spend time driving all parts of the City/District in order to determine what is occurring that affects code enforcement or that code enforcement efforts should affect.
 - Return all calls from people who have received letters from the City/District the same day as received or at the latest, within one (1) business day of receiving the call.
 - Respond to all letters from people who have received letters from the City/District within three (3) business days of receiving the letter.
 - When inspecting a property for compliance with a City/District ordinance and there is some doubt regarding whether a violation exists or what the specific nature of the violation may be, do not act on the matter. Watch the situation for an additional period of time and observe what develops and whether the matter becomes clearer. Consider contacting the City Attorney/District Legal Counsel and seek her/his perspective. Never contact a property owner/renter if unsure about whether an actual violation of an ordinance, regulation, or permit has occurred. When in doubt—wait and monitor the situation.
 - All agreements with property owners/renters regarding work to be done on their property, timing, re-inspection dates, etc. should be in writing. Electronic mail is acceptable if both parties (the City/District and the property owner/renter) send e-mail to each other acknowledging and agreeing to the terms of the agreement.
 - Maintain a current and accurate log of cases turned over to the City Attorney/District Legal Counsel for action. The log must be updated at least monthly. The log should be kept in a file in the cabinet where active City Attorney/District Legal Counsel case files are filed.
 - Keep all case code enforcement cases (tracking) reports from the City Attorney/District Legal Counsel's office in a file in the file cabinet where active case files are filed.

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