



Legislation Text

File #: 23-1118, **Version:** 3

Planning and Building Department, Code Enforcement Division, recommending the Board:

- 1) Establish a Code Enforcement Amnesty Program in El Dorado County for certain types of code cases; and
- 2) Direct staff to return to the Board within 90 days of the completion of the first year of the Code Enforcement Amnesty Program to provide an update and fiscal analysis. (Cont. 7/25/2023, Item 29)

FUNDING: Fee Revenue.

DISCUSSION / BACKGROUND

On March 7, 2023, the Board of Supervisors granted conceptual approval for the establishment of a Code Enforcement Amnesty Program (Program) and asked staff to report back with a completed program within 90 days. Specifically, the Board approved a motion for the development of a program with the following components: 1) Unpermitted residential, residential accessory structures, or additions from previous owners; 2) Waiving penalty (investigative) fees for construction permits, however customary permit fees would still apply; 3) Applying a flat fee for pre-site inspections with an escalator to cover staff costs; 4) Applying building code standards at the time of construction where feasible; 5) Categorizing permits as appropriate; and 6) Exploring the use of existing systems to “true up” any discrepancies that exist between the Assessor and Code Enforcement. Staff have assembled a program document (Attachment A) that synthesizes each of these components into the new Program. If approved, Attachment A will be finalized and published on the County website.

In an effort to answer questions raised by your Board at the March 7, 2023, meeting staff have prepared a Q&A section below.

On June 27, 2023, staff presented a draft Amnesty Program for Board consideration. The item was continued to July 25 to allow for further research and then continued again to September 19 in order to engage in additional stakeholder outreach. Attachment B summarizes the stakeholder outreach and feedback received as well as resulting program changes or additions. Attachment A is the revised program with changes highlighted.

Is there a way to assist property owners in gaining compliance by relaxing building codes or permitting them under codes that existed at the time of construction?

Building staff are required by the State of California to enforce the California Building Standards Code contained in Title 24 of the California Code of Regulations. Every three years, a triennial update occurs to those codes that factors in the latest updates in engineering and safety standards. As such, it is important that projects be considered against the latest updated codes. However, staff have agreed that any structural component that was previously unpermitted will be eligible to meet those codes in place at time of construction. Examples of structural components may be the foundation, beams, floors, and a roof. Non-structural components will have to meet current codes. These may include electrical, plumbing, energy efficiency, and fire sprinklers. To the extent possible, owners will need to assist Building staff in ascertaining when the unpermitted construction occurred so Building

staff can know which code to apply.

Will property owners be required to place solar on their homes when they apply for a permit?

The California energy code requires the installation of solar on all new single-family homes and ADU's. Depending on how the ADU is built (i.e., attached, converted, altered) there may be an exception. There are no exceptions for new single-family homes. So, unless the entire home or ADU was built without a permit, property owners will not need to place solar on their homes when they apply for a permit to correct the unpermitted work.

Which fees can be waived and how much will the Amnesty program cost when fully implemented?

Under the Program, the investigative fees (which double the permit fee) will be waived for eligible cases, however no other permit or construction fees can be waived. The only mechanism for fee waivers is the County's B-2 policy or disaster relief such as those waivers approved for the Caldor or Mosquito incidents. The potential costs of the program are difficult to estimate at this point, but staff will have a clearer picture with the annual report to the Board. To illustrate, here is an example of potential costs with the program assuming 20 cases are discovered: Figuring that each of the 20 cases would have an estimated \$300 - \$1,500 investigation fee, it would depend on what the violation is that needs to be remedied. If there were five grading at \$400 each, five decks at \$300 each, five are accessory structures at \$1,000 each, and five are additions at \$1,500 each, the potential cost would be around \$16,000.

The only jurisdiction that staff studied that had additional fees waived was San Mateo County. There they replaced traditional planning and building fees with three defined fees totaling \$688. This applied to unpermitted "second units" or ADUs, specifically. Staff would recommend against this approach as it creates winners and losers/disparities in how code cases are treated. Additionally, this would be a benefit beyond what the "voluntary" program offers. If the Board were to decide to offer this benefit on the "involuntary" program it would be fair to offer it on the voluntary side, as well; however, this would significantly increase the cost of the program as it would open up all code cases and encourage an "ask for forgiveness" approach as opposed to encouraging owners to follow County code from the outset.

What happens in certain cases when a property owner does not have the means to correct unpermitted work but is still trying to comply with an open code case?

Code Enforcement staff encounter property owners who do not have the means to cure a violation, either because they are on a fixed income or other reasons on a case by case basis. In these situations, CE staff are limited in options to assist the owner on their compliance efforts. The owner must continue to show progress towards curing the violation to ensure that the violation does not escalate to an administrative citation and continually accrue fines. Staff often recommend taking the abatement actions in small stages, including: working with Planning and Building staff to inquire about what would be needed to permit the work and to verify the work can be permitted; contacting drafts people and/or architects or engineers; and starting the plan process. Sometimes the entire permitting process seems very overwhelming to property owners, so this incremental process can be of great benefit. In all cases CE staff now cloud the title of the property by recording a Notice to

Correct (NTC). The NTC results in an open code case until the next real estate transaction occurs, whereby the current owner or new owner would have to cure the violation in order to lift the NTC. This would ensure that the future owner is aware of unpermitted work. The benefit of clouding the title is that it brings awareness to issues on the property so that the number of cases where property owners didn't know about previous owners' unpermitted work trends down to zero over time. However, clouding the title will make it much more difficult to effectuate a real estate transaction if an outside financial institution is financing the home, in addition to issues with obtaining proper insurance for the home.

What leeway does the Assessor have in escaped assessments?

There is no wiggle room in state code that allows for leeway in capturing escaped assessments. Upon discovery, the Assessor must follow state statutes. The Assessor has noted that it would not be equitable to ignore a given year where an escape exists. Therefore, if escapes existed going back further than four years, the Assessor would be obligated to apply the law to the maximum. The Assessor has indicated that he does not have legal discretion to only apply the assessment for two or three years. The statute must be fully applied.

Can Planning and Building work more closely with the Assessor on unpermitted structures?

In follow-up conversations between staff, agreement was reached to hold more regular discussions about information sharing between the Planning and Building Department and the Assessor's Office. The Board should be aware that enhanced communication between the Planning and Building Department and the Assessor's Office regarding unpermitted structures may result in an increase in property taxes from property assessments and/or fines from code enforcement violations. This will likely have a negative effect on the Program as it will tend to offset the savings derived from not charging the investigative fee.

Proposed Program

No update to Chapter 9.02 is needed to implement the Program; however, the pre-site inspection and escalator is a new fee and, accordingly, will need to be placed on the updated fee schedule. To that end, staff are already working on a department-wide fee and nexus study which will be presented to the Board for a workshop in July 2023. Included within that study is a proposed fee of \$107 to cover the cost of a pre-site inspection as part of the new Program. Since this new fee will be added at a later date, it will be mentioned as a component of the Program but not be in place until the Board approves an updated fee resolution for the Planning and Building Department. Should the Board opt to not include the pre-site inspection fee in the new fee resolution, staff will amend the Amnesty Program document accordingly.

In line with the Board's conceptual approval, staff have developed a program for residential properties that includes the following:

- This program is for those parties with a residential structure, accessory structure or addition, who are subject to an open code case due to unpermitted work having been completed by a previous property owner without their knowledge and without having been disclosed during the

escrow process.

- Additionally, those code cases where the violation is due to expired permits under a previous owner are eligible.
- If an individual meets the eligibility criteria for the Program the existing investigation fee is waived for that permit.
- As a courtesy to impacted individuals eligible for the Program, Code Enforcement and Building staff will be available to perform a pre-site inspection to better assist the owner in how to expeditiously remedy the written violations on the property.
- The pre-site inspection team will consist of one staff member each from the Code Enforcement Division and Building Services Division, in addition to assistance from the Assessor and Treasurer-Tax Collector, when applicable.
- A nominal fee of \$107 will be assessed for staff time with an escalator built into the fee resolution.
- All construction must meet current non-structural code requirements (i.e. electrical, plumbing, energy efficiency, and fire sprinklers).
- The structural portion of the structure may meet the building code requirements in effect at the time of construction.
- Proof of date of construction must be provided.
- Everything else must meet current codes.

Additionally, the Board requested the categorization of permits as appropriate. To that end, staff have categorized violations and types of cases. Each of the lists below are ranked from highest priority to lowest for enforcement purposes.

- Violations
 - Obvious health and safety issues including, but not limited to.
 - Electrical, improperly installed heat producing appliances
 - Dilapidated decks, stairs, roofs
 - Accessory structures converted to dwellings
- Additions to dwellings
- Portions of dwellings converted to living space (basements, etc.)
- Grading
- Types of Cases
 - Dwellings - Entirely new dwellings have aspects that from ground to roof have not been verified for structural and safety aspects, which are crucial for a structure that will be occupied; in addition to the electrical system as a known safety aspect, stairs, steps

and landings are critical, as well as heat producing systems.

- Accessory Dwelling Units (ADUs) - These dwellings also have the same aspects as above; however, with SB-13, if found to have existing violations for the structure, the owner can request a delayed enforcement for up to 5 years. There are restrictions to the delayed enforcement.
- Accessory structures converted to dwellings - When an existing (legal) structure was built, many aspects of the construction have been confirmed to comply with at least the codes/requirements at the time it was built; therefore, the additional construction done to convert it to a dwelling unit may not be as much of a difficult (and costly) situation to correct with a permit.
- Grading - Grading is the one violation where one of the usual compliance options is not available, which is to remove. Grading can not be removed like it can be with a structure; grading cannot be put back to its pre-graded status. Therefore, a permit is always required, and it can be costly and difficult for a new owner to determine exactly what the extent of the grading work was. (Note: In many cases the grading was done in order to accept a new unpermitted structure or access to it, or for cannabis grow sites; these situations are easier to see the grading work that was done. The grading to accept a new structure can usually be permitted when the structure has been permitted, if the structure is to remain.)

If approved, staff will post the new Program information sheet on their website and utilize the County's Communications and Outreach team to spread the message about the new program. Per Board direction, staff will collect data on the Program throughout the first year and report back around the one-year mark to assess progress and discuss any changes needed to the Program.

ALTERNATIVES

- 1) The Board could choose not to establish the Program; or
- 2) The Board could amend components of the Program.

PRIOR BOARD ACTION

10/11/22 Legistar Item 22-1764 - Code Enforcement Presentation and Amnesty Program direction.
03/07/23 Legistar Item 23-0410 - Amnesty Programs Presentation
06/27/23 Legistar Item 23-1118 - Code Enforcement Amnesty Program

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

Adoption of the Program would result in the loss of investigative fees assessed on property owners who were cited for unpermitted work and have applied for a permit to fix the violation(s). This would be offset by the collection of a new pre-site inspection fee to nominally cover the cost of staff assisting more closely to help owners get to compliance more rapidly. Staff will assess the financial impacts of the Program and report out on the annual report to the Board.

CLERK OF THE BOARD FOLLOW-UP ACTIONS

N/A

STRATEGIC PLAN COMPONENT

Public Safety, Healthy Communities, Good Governance

CONTACT

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