



## Legislation Text

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**File #:** 23-0410, **Version:** 1

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Planning and Building Department, Code Enforcement Division, recommending the Board receive a presentation on Amnesty Programs in use by other jurisdictions and provide feedback and direction on whether to establish an Amnesty Program in El Dorado County.

**FUNDING:** N/A

### **DISCUSSION / BACKGROUND**

On October 11, 2022, Code Enforcement (CE) and County Counsel staff briefed the Board of Supervisors on issues and challenges facing the CE Division. A critical element of those discussions was whether the County should consider an amnesty program to address certain challenging types of code cases. The Board directed staff to investigate amnesty programs from other jurisdictions and report back findings and recommendations for discussion.

#### Summary of Challenging Code Case Types and Existing Remedies

A key challenge is how to appropriately respond to cases where a previous owner completed unpermitted work on the property and it was not disclosed during the escrow process. In this scenario, a reporting party has filed a complaint with Code Enforcement regarding the unpermitted work and after an inspection occurs it is determined there is a violation - or in some cases, many violations. Frequently, the current owner had no knowledge that the work was unpermitted but must work to remedy the violation(s), as they now own the property. Options to remedy include: remove or relocate a structure; obtain a permit; or convert back to original status. If an owner opts to obtain a permit for unpermitted work, the improvements must be brought up to current codes if it never received a final inspection, even if the unpermitted work had been completed decades ago. Additionally, property owners have administrative remedies available to them including cause of action against previous owners and the licensed real estate broker involved in the transaction.

Another key challenge is how to address cases where the violation is due to expired permits. When an applicant is issued a building permit, that permit is good for two years. If the permit is never finalized - including with final building inspections - the permit will expire and whatever work has been completed by the applicant will become unpermitted. Building Division staff are working on an improved system of issuing Notices of Non-Compliance to better inform applicants about the status of their permits, including 30-day warning letters giving applicants the opportunity to act on or withdraw their application. If no action is taken by the applicant, the Notice of Non-Compliance will be recorded on the property's title. This will serve to alert any future buyers that there is a potential issue with the property. It can be easily removed upon remediation of any identified issues.

#### Amnesty Programs Studied

Staff have studied amnesty programs offered in other jurisdictions to better understand what potential remedies there may be for the Board to consider. The following five jurisdictions have programs that

staff investigated: the City of Alameda, San Mateo County, Humboldt County, the City of San Jose, and the City of Solvang. Program highlights are listed below. Of note: a voluntary program is offered to those property owners who voluntarily come forward to cure code violations on their property. An involuntary program is inclusive of property owners who have been found to have violations and did not voluntarily come forward to cure them. Jurisdictions may choose to offer programs only to those who voluntarily participate as means of an incentive. Those who don't voluntarily participate but have active code cases would follow the standard process and pay all applicable fees and penalties. Some jurisdictions offer the same programs whether applicants are voluntary or involuntary.

#### City of Alameda (Voluntary)

- Offers an “Amnesty Program for Undocumented Construction.”
- Under the program, anyone who voluntarily applies to the program may have the undocumented construction at their property recognized by the City provided that the work and materials comply with all minimum program and code requirements.
- The undocumented construction must comply with all Zoning and Building Codes and City Charter regulations in effect at the time of the original construction.
- Any permit fees or development fees that would have been in effect at the time of the original construction would need to be paid, based on the current schedule of fees.
- Investigative fees would be exempt if a property owner voluntarily enters the program.

#### San Mateo County (Voluntary or Involuntary)

- Pilot program called the “Second Unit Amnesty Program” for ADUs constructed without some or all necessary permits and approvals.
- Offers owners the opportunity to bring their unit into compliance with basic health and life safety standards without the risk of code enforcement action, and with significant fee reductions and assistance in determining necessary improvements.
- Low-cost initial inspection of the unpermitted unit.
- Significant reduction or waiver of planning, building and other permit fees.
- Suspension of code enforcement action for any issues identified and improvements made through the amnesty program.

#### Humboldt County (Voluntary)

- The “Safe Home Program” applies to unpermitted residential, residential accessory structures, or additions.
- No investigation fees, code compliance fees, or other penalties are applied.
- Penalty fees are waived for construction permits, customary permit fees still apply.
- Provides a “no jeopardy” opportunity to discuss a project with the County, and no record will be maintained of the inquiry if the owner opts not to apply for a permit.
- All applicable codes currently in effect will apply except for energy standards and some provisions of the County Code.
- Staff costs are not waived.

#### Mendocino County (Voluntary)

- The “Building Amnesty” program allows for all investigative and penalty fees to be waived if the property owner voluntarily reports an unpermitted residential building and obtains permits.
- Does not apply if a structure has already received a red tag or Notice of Violation.

#### City of Solvang (Voluntary or Involuntary)

- Offers an Amnesty Program to both residential and commercial property owners.
- Properties can be brought into compliance without fines or penalty fees.
- A site inspection is available to help determine the requirements for permit approval.

#### Analysis and Questions

After investigating these programs several key themes emerged. Each jurisdiction opted to do some level of fee waivers to help encourage property owners to come forward and correct their unpermitted structures. All the jurisdictions rewarded voluntary compliance, while two of them also allowed for involuntary compliance. And finally, each program contemplated whether compliance was achieved through current codes or those codes in place at the time of the unpermitted construction.

Key questions for the Board to consider are:

- 1) Are fee waivers going to be an acceptable element of an Amnesty Program?
  - a. If so, which fees would be waived?
- 2) Would the program apply to both residential and commercial, or just residential?
- 3) Would it be a voluntary only program or also applicable to involuntary?
- 4) How long would the Amnesty Program run for or would a one-year pilot program work best initially?
- 5) Would staff require work to be brought up to current codes or apply codes in effect at the time construction was done, or some combination?
- 6) Would the Board want a more narrowly tailored program that only addresses unpermitted work unbeknownst to a current owner or expired permits, as discussed earlier in this staff report?
- 7) How should unpermitted construction that poses a serious safety or health concerns be addressed (hazardous wiring, lack of sanitation)?
- 8) How should unpermitted construction that does not comply with zoning be addressed (does not conform to setbacks from property lines, creeks or other water ways)?

To assist in answering some of these questions, staff have prepared some thoughts on what a potential program could look like.

- 1) An Amnesty Program should run for a specific amount of time, such as a one-year pilot program. Staff would return to the Board with recommendations to extend or terminate.
- 2) To assist property owners, a pre-site inspection would be done to determine site conditions, confirm structures on site, and the status of any construction. Staff recommends a flat fee for the pre-site inspection, to be determined based on Board discussion.
- 3) A team of senior staff would be available by appointment to meet with property owners to discuss every aspect of permitting a structure to ensure consistent information flow.
- 4) A fee estimate would be generated based off the pre-site inspection and the elements needed

to bring the structure into compliance. The fee estimate would note any fees that would be waived (as directed by the Board) and those that the applicant must pay.

Should the Board decide to move forward with an Amnesty Program, staff will bring a detailed draft program back to the Board within 90 days.

#### **ALTERNATIVES**

- 1) The Board could choose not to establish an Amnesty Program; or
- 2) The Board could request additional information on Amnesty Programs

#### **PRIOR BOARD ACTION**

Legistar Item #22-1764 on October 11, 2022

#### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

#### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

#### **FINANCIAL IMPACT**

The financial impact would be assessed based on direction from the Board on whether fee waivers would be included, and which fees those would be.

#### **CLERK OF THE BOARD FOLLOW-UP ACTIONS**

N/A

#### **STRATEGIC PLAN COMPONENT**

Public Safety, Healthy Communities, Good Governance

#### **CONTACT**

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