



AGENCY: City Council  
MEETING DATE: August 12, 2019  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
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## AGENDA ITEM SUMMARY

### **TITLE:**

**Receive Report and Consider Adoption of City Council Resolution Appointing a City Prosecutor for the Enforcement of City Ordinances**

### **ISSUE:**

Over the years, the City has struggled to clear some of our more difficult code enforcement cases. This is particularly true of nuisance violations associated with real property, where the property owner is not responsive to City staff citation letters and fees. After expiration of the abatement period and levying of fines or penalties, some property owners simply ignore the City's demands for abatement and payment of fines. The City has pursued some of these intransigent code enforcement cases in small claims court with limited success, as even a favorable ruling results only in the imposition of fines and not necessarily the elimination of the code violation.

Situations where the City's code enforcement letters are ignored and the City is not able to get the violation cleared through the small claims court process have created frustration for both the impacted neighbors and City staff, who need a better tool kit to remedy the situation. One new avenue to address the nuisance condition is criminal prosecution, which to date has not been pursued in Fort Bragg. In an effort to be more effective in reaching compliance in code enforcement matters and potentially collecting fines and penalties, staff is requesting that the Council appoint a City Prosecutor so that the City may pursue criminal enforcement of code violations, when circumstances are appropriate.

### **ANALYSIS:**

The City's Code Enforcement Program is complaint driven. Community members may report code violations anonymously. Complaints are investigated by Community Development Department (CDD) staff and if substantiated, a Notice of Violation is mailed to the violator via certified mail. The Notice of Violation sets forth the actions required for abatement. The violator has fourteen days to make the repair, remove the subject of the violation, or correct the code violation. If more time is needed to bring the violation into compliance, CDD staff will work with the violator to develop a strategy and timelines to address the violation.

If the property owner does not respond and the violation is not abated, a second Notice of Code Enforcement Fee is sent via certified letter with a penalty. If that does not receive a response, a third notice is sent via certified mail with the penalty/fee doubled. If there is still no response, a fourth letter is mailed with the additional notice that for each day of violation a per diem penalty may apply.

In cases where the violator does not respond to the notices and fails to correct the violation, the City has struggled with an effective process to collect penalties and obtain compliance

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by the violator. Staff has had limited success by pursuing the matter through small claims court and many times the City recovers no fees and the court obtains limited or no improvement to the violation by the violator. City staff may have three or four small claims court dates on one code violation as the judge works to persuade the code violator to address the code problems.

In an effort to get better results for our more difficult code enforcement cases, we reached out to our City Attorney. Jones & Mayer has an attorney on staff who specializes in Code Enforcement. Greg Palmer recommended that for better success with compliance, we should pursue criminal charges. City prosecution services are included in our contract with Jones & Mayer. In order to add that option to our enforcement efforts we need to appoint Jones & Mayer as our prosecutor.

**RECOMMENDED ACTION:**

Adopt a Resolution appointing a City Prosecutor for the Enforcement of City Ordinances.

**ALTERNATIVE ACTION(S):**

1. Do not adopt a Resolution appointing a City Prosecutor for the Enforcement of City Ordinances.
2. Provide additional direction to staff.

**FISCAL IMPACT:**

The City's contract with Jones & Mayer provides for 35 hours of general legal services per month as part of the monthly retainer amount of \$7,175 (\$86,100 annually). The City has budgeted \$115,000 for City Attorney Services in account number 110.4130.0311.

**GREENHOUSE GAS EMISSIONS IMPACT:**

It is not likely that the appointment of a City Prosecutor will have any significant impact on greenhouse gas emissions.

**CONSISTENCY:**

Effective enforcement of the City's Ordinances, especially nuisance violations that may impact the health and safety of City residents is consistent with the City's Priority Area for maintaining and improving Quality of Life, specifically, beautification of streets and sidewalks.

**IMPLEMENTATION/TIMEFRAMES:**

The appointment of the City Prosecutor will be effective August 12, 2019 and the City could start code enforcement prosecution soon after.

**ATTACHMENTS:**

1. Resolution

**NOTIFICATION:**

N/A