



DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land - Helping to build great communities

TO: Leslie Brown, Administrative Analyst

FROM: Kami Griffin, Assistant Director, Department of Planning and Building

DATE: July 8, 2013

SUBJECT: Response to Grand Jury Report on *An Event is An Event – An Impact Is An Impact*

RECOMMENDATION

It is recommended that this report serve as the Department of Planning and Building's response to the Grand Jury Report titled "***An Event is An Event – An Impact Is An Impact.***"

DISCUSSION

On June 10, 2010, the Grand Jury issued a report titled "*An Event is An Event – An Impact Is An Impact.*" This response addresses the findings and the recommendations pertaining to this report.

OTHER AGENCY INVOLVEMENT/IMPACT

Not Applicable

FINANCIAL CONSIDERATIONS

Costs for preparing this response are included in the current department budget.

RESULTS

This response will meet the legal requirements for responding to a Grand Jury report with findings and recommendations.

**Response by the Department of Planning and Building to the
Grand Jury Report of June 2013 on
*An Event is An Event – An Impact Is An Impact***

The San Luis Obispo County Department of Planning and Building has the following comments with respect to the **Grand Jury's Findings 1 - 13 and Recommendations 1-3 and 6-12** contained within the report titled: **An Event is An Event – An Impact Is An Impact**

GRAND JURY FINDINGS

- 1. The existing temporary events ordinance is outdated (1980). The Planning Department is operating and making decisions based on decades-old guidelines that have not keep pace with the changing realities and technologies of commercial (for-profit) or non-profit outdoor events.**

Response: The Planning and Building Department agrees with this finding.

- 2. The current permit process needs to be streamlined.**

Response: The Planning and Building Department agrees with this finding (see below).

It is assumed that this finding refers to the current permit process for Commercial events of greater than 3,000 people which require a hearing before the Board of Supervisors and are issued by the Tax Collector. The Board provided direction to the Tax Collector's office and the Department of Planning and Building to simplify this process in August 2005. The Planning and Building Department has collaborated with the Treasurer Tax Collectors office, focusing its efforts on developing the proposed amendment to the current Temporary Events Ordinance which will ultimately streamline this process. In addition, the Department of Planning and Building has a continuous process improvement effort in place to evaluate permit streamlining options on an ongoing basis. Please see the department's response to Recommendation number 2 for additional information.

- 3. The Planning Commission and Board of Supervisors have received input from public groups, individual, industry groups, and special interest groups about the Event Ordinance Amendments over the last eight years.**

Response: The Planning and Building Department agrees with this finding.

- 4. All events have the potential of adversely impacting the community and environment.**

Response: The Planning and Building Department partially disagrees with this finding.

Each event and event site is different and evaluating whether it would adversely impact the community and environmental should be made on a case by case basis. Based on the location of the event site, the type of event, when the event will occur, the number of attendees at the event, and the access to the event site, a proposed event may have no impact on the community or environment.

5. **Events are presently not equitably regulated. There are three types of events, (1) permitted (2) exempted or (3) those event where sponsors fail to apply for a permit.**

Response: The Planning and Building Department partially disagrees with this finding.

Different types of events are regulated differently as noted in the Grand Jury's report. Whether that is equitable is a judgment call. We agree there are three types of events that occur in the County as set forth in the finding.

6. **Code enforcement pertains only to permitted events. Events that are exempt from the permit process or where sponsors fail to apply for a permit are not subject to code enforcement.**

Response: The Department of Planning and Building disagrees with this finding.

The Department of Planning and Building's Code Enforcement Section will investigate any event complaint regardless of whether the event is exempt, legally established with a permit, or occurring without a permit. If after investigation the complaint is determined to be correct, Code Enforcement will work with the violator to achieve compliance, including but not limited to applying for and receiving permits, or ceasing the use if it is unable to be approved.

7. **There can be no code enforcement without specific event guidelines defined in the ordinance.**

Response: The Department of Planning and Building disagrees with this finding.

The Department of Planning and Building's Code Enforcement Section enforces all standards of the County's Land Use Ordinance, including those that are not specifically established for a particular use (e.g. noise). If after investigation the complaint is determined to be correct, Code Enforcement will work with the violator to achieve compliance, including but not limited to applying for and receiving permits or ceasing the use if it is unable to be approved. Although having an event ordinance with standards that are specific to that use would be useful for Code Enforcement when investigating an event complaint, they are not necessary for Code Enforcement to investigate a complaint.

8. **On the Planning Department's website, the "Questions and Complaints" link fails to specify how the complaint will be handled, i.e., the response time and subsequent follow up contact information.**

Response: The Planning and Building Department agrees with this finding.

Please see the response provided to Recommendation #10.

- 9. The Planning Department does not maintain a log of all code enforcement complaints received nor how and when they were resolved along with a description of actions taken.**

Response: The Department of Planning and Building disagrees with this finding.

The Department's Permit Tracking System contains records for each code enforcement case created, including how and when the case was resolved and a description (through notes attached to the case) of actions taken. Because these cases are confidential, only general information about the case including location (street address and Assessor Parcel Number), general nature of the violation and the status of the case (received, closed, billing, cancelled) are available to the public on the Department's website.

- 10. The Planning Department does not have a policy as to how long it takes to initially respond to a complaint.**

Response: The Department of Planning and Building disagrees with this finding.

The Department's Budget Performance Measures includes a measure that reads "All complaints reviewed within 10 working days". The set goal, which has been met in the past two years, is that 100% of all complaints received are reviewed within 10 working days. This performance measure is reported in June of each year during budget hearings.

In the FY13-14 budget recently adopted by the Board, the following was provided as to how the Department was meeting this performance measure.

Code Enforcement: To date there have been 184 enforcement cases initiated in FY 2012-13. All complaints are being reviewed within 10 days of receiving the complaint. For cases involving health and safety (e.g. substandard living conditions), a high priority is assigned to those cases and these are typically reviewed within two days.

- 11. During the day of permitted events, several County and State agencies, i.e., Public Works, Health Department and CAL FIRE, make on-site inspections. Event sponsors who do not go through the permit process (exempted events and those who fail to apply for a permit) have no required on-site safety inspections.**

Response: The Department of Planning and Building disagrees with this finding.

Being exempt from a land use permit does not exempt individuals from other agencies requirements for permitting or inspection.

- 12. In the absence of specific guidelines, some event sponsors have taken on the responsibility to mitigate public concerns and public safety as a priority in their event planning.**

Response: The Department of Planning and Building agrees with this finding.

The Department believes there are sites being used for events that are exempt from land use permits that are operated by professional event planners who address safety and potential neighborhood concerns as they plan and execute events.

13. Not all regulations can be applied equally to all venues.

Response: The Department of Planning and Building disagrees with this finding.

With the exception of the one venue specifically exempted from having to obtain an Outdoor Commercial Business License from the Tax Collector's Office, all regulations that can be applied are applied equally.

GRAND JURY RECOMMENDATIONS

1. The Planning Department should finalize an Events Ordinance Amendment and the County Board of Supervisors should adopt it in 2013.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

The decision to amend the Land Use Ordinance is ultimately up to the Board of Supervisors. Modifying the County's Land Use Ordinance is a legislative act of the Board of Supervisors. This occurs after a public hearing is held by the Planning Commission and the Planning Commission renders its decision in the form of a recommendation to the Board of Supervisors. The Board may approve, modify, or disapprove the Planning Commission's recommendation. The Board determines if proposed ordinance amendments are acceptable.

An amendment to the existing Temporary Events provisions of the Land Use Ordinance has been prepared. A public hearing was held before the Planning Commission who rendered their decision in the form of a recommendation to the Board of Supervisors. The Board of Supervisors has held two public hearings on the proposed amendments and on November 8, 2011 continued the item off calendar and directed staff to forward the amendments to the Uniquely SLO Economic Cluster for review and comment. Staff made this referral and has met twice with the Uniquely SLO Economic Cluster. When the Cluster has completed its review and made comments on the proposed amendments, Planning and Building Department staff will schedule the item for a public hearing before the Board of Supervisors. It is unknown if this will occur in 2013.

2. The Planning Department needs to streamline the permit process.

Response: The recommendation has not yet been implemented, but will be implemented in the future.

It is assumed that this recommendation refers to the current permit process for Commercial events of greater than 3,000 people which require a hearing before the Board of Supervisors and are issued by the Tax Collector. The proposed ordinance amendments act to delete this process, consistent Board direction in August 2005 to simplify this process. In addition, the proposed ordinance amendments include a ministerial permit level which is a streamlined permit process. The proposed ordinance amendments will be brought to the Board of Supervisors as expeditiously as possible for due consideration.

Absent adoption of these amendments, within one year from the date of publication of this Grand Jury report, the Planning and Building Department in partnership with the Tax Collector's office, will bring forward a request for the Board of Supervisors to authorize the preparation of amendments to Title 22 that would move the requirements for Outdoor Entertainment permits from Title 6 into Title 22. By shifting any required permitting for these large commercial events into Title 22, an applicant would only have to request a land use permit once for a site, instead of every event on a site requiring a separate public hearing in front of the Board of Supervisors. This would create a more streamlined process from what exists today.

3. The Planning Department should be able to exercise professional judgment in waiving permit conditions on a case-by-case basis.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

The Planning Department acts only on Ministerial permits. Ministerial acts involve little or no judgment by the Department as to the wisdom or manner of carrying out the activity. The Department merely applies the law to the facts as presented but can use no special discretion or judgment in deciding how the project should be carried out. Only in cases where specific instances have been written into the ordinance that would allow for waiver (e.g. if the event venue is more than 1 mile from the nearest residence, the requirement for a noise analysis is waived), is the Department able to grant a waiver. A discretionary permit is any permit requiring a decision-making body to exercise judgment prior to its approval. Decisions on Discretionary permits and conditions are made on a case-by-case basis by the Hearing Officer or Planning Commission (and in some cases the Subdivision Review Board) after a public hearing and after those review authorities have considered the testimony received and the information provided by staff.

6. The Planning Department should hire additional code enforcement staff.

Response: This recommendation has been implemented.

Each fiscal year, the County holds public hearings on and adopts a County budget. The Board, during the budget hearings can add, delete or modify the proposed budget as they deem appropriate. Positions within each Department are approved with the budget and a Position Allocation List (PAL) is adopted. Although a PAL can be amended off a budget cycle, typically new positions are added during budget. During adoption of the 2013-14 fiscal year budget, the Board increased the Department's PAL by 0.5 full time equivalent (FTE) Resource Protection Specialist position (code enforcement).

Additionally, the Department of Planning and Building's code enforcement section has not received many complaints regarding events occurring in the County. There are approximately two complaints received per year about event sites (this does not include complaints about private events that are occurring at vacation rental properties by individuals renting the vacation rental – this issue was proposed to be handled by a separate standard in the proposed ordinance). This small number of complaints can be investigated and followed up on by existing staff which includes the recent increase of 0.5 FTE .

7. The Planning Department code enforcement division should conduct on-site monitoring of large-scale events, particularly during the nights and on weekends.

Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

When appropriate, a land use approval can include a condition that requires an event sponsor to notify the Department of Planning and Building's Code Enforcement section of event dates. Code enforcement can choose to check in as part of Conditional Compliance Monitoring on some reasonable number of events per year, per event site. The cost of this would be covered

by a cost recovery agreement (see response to recommendation #8). To date, application of a condition such as this has not been deemed necessary as part of approved Temporary Event Minor Use Permit Approvals. Therefore, because monitoring can be done as a condition of approval when deemed to be appropriate, implementation of this recommendation for **every** large scale event is not reasonable or warranted.

8. The Planning Department should add a nominal fee to the initial permit application fees for code compliance.

Response: This recommendation has been implemented.

The Department's approved fee schedule includes four condition compliance fees that can be added to any building permit associated with a land use permit for events. In addition, if no building permits would be required in order to establish the use, these fees can be collected at the time of the land use permit approval. The four fees are Major-with Site Visit, Major-without Site Visit, Minor-with Site Visit and Minor-without Site Visit. In addition, the following Footnote #13 in the adopted fee schedule applies to these fees:

"This Condition Compliance fee is to cover the costs for the typical time required to ensure compliance with conditions of approval on smaller projects. For larger residential, commercial and industrial projects, if the Planning Director determines that the costs will be substantially in excess of the flat rate fee, the applicant shall be notified that the total costs will be determined by full cost recovery methods and that additional charges may be forthcoming. A cost accounting agreement will be required and shall be submitted to the Department of Planning and Building prior to the issuance of any construction permits for the project."

In addition the following Footnote #1 in the Department's adopted fee schedule applies to all land use permit application fees:

*The department wishes to recover the full cost of service (including consultant cost) for all major projects. If the processing cost of an application, including environmental review or **administering the conditions of approval** (emphasis added), will be substantially in excess of the fee/deposit, the applicant may be notified before the project is scheduled for public hearing that the total processing cost will be determined by full cost recovery techniques and that additional charges (invoices) may be forthcoming. Invoices not paid within 30 days of billing will have all processing of the project stop until the invoice is paid in full. This option can also be used where the department determines that processing costs will be substantially less than the original fee/deposit. In this case, the unused portion of the fee/deposit will be refunded. Billing for Land Use/ Division Applications will be at \$142/per hour. Billing for Building permit applications will be at \$133/per hour. These rates will be charged at 1.5 times the hourly rate when work is performed during overtime conditions at the applicant's request.*

The County's Land Use Ordinance additionally provides for full cost recovery when formal administrative or judicial actions are initiated to remedy a violation.

- 9. The Planning Department should establish a system to recover from the event sponsors the actual costs for additional expenses related to enforcement of code violations.**

Response: This recommendation has been implemented.

There are two ways this can occur. The first is described in response #8 above. Cost recovery can be used to assure compliance with conditions of approval. In addition, the Department's approved fee schedule includes a series of code enforcement fees, including hourly fees that can be charged during the investigation of a code enforcement case.

- 10. The Planning Department website should clearly describe the complaint procedure for an event and identify a specific code enforcement staff member and phone number.**

Response: This recommendation has not yet been implemented but will be implemented in the future.

Within six months from the date of publication of this Grand Jury report, the website page for the Code Enforcement section of the Department of Planning and Building will be modified to explain the complaint procedure and how code complaints are investigated and acted on. This will not just apply to complaints on events, but will cover the procedure for all complaints. The website page will also include a link to the existing staff directory that contains the staff's names and phone numbers and the areas they cover.

- 11. The Planning Department should have a policy for how long it takes to initially respond to a complaint.**

Response: This recommendation has been implemented.

As specified in the response to Finding #10, the Department does have a performance measure relating to initial response to code enforcement complaints, tracks this performance measure throughout the year, and reports on this each year with the County's budget.

- 12. The Planning Department should maintain a log of all code enforcement complaints received that includes how and when they were resolved and a description of the actions taken.**

Response: This recommendation has been implemented.

As specified in the response to Finding #9, the Department does have a tracking system that logs all code enforcement cases, tracks when cases were begun and resolved and contains notes on how cases were resolved and the actions taken.