

REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE ILLEGAL GRADING AND FILLING IN THE TIJUANA RIVER VALLEY

At the Transportation and Land Use Committee meeting of August 8, 1988, the Committee directed the City Attorney to finalize the details of a civil penalties ordinance. This item was subsequently continued to October 10, 1988.

The authority of a charter city to impose civil penalties was researched and established in a previous report to this Committee in February 1987. A copy is attached to provide the members with background information on civil penalties and the various enforcement techniques currently available against violators of the Municipal Code.

The attached civil penalties ordinance is modeled after federal and state statutes which provide for the imposition of civil penalties, i.e., the Environmental Protection Act and the California Air Pollution Control Act.

Please recognize that this ordinance is broad in scope and is not limited to just illegal grading violations. Our Code Enforcement Unit recommended the use of this civil penalties ordinance for a host of Municipal Code violations including zoning regulations and building and fire codes. The ordinance is not designed to be used for the minor or technical violation, but reserved for those large scale Municipal Code violations where the violators have obvious financial resources to correct the violations.

The assessment of civil penalties is to be initially handled through an administrative process where a hearing officer appointed by the City Manager determines that Municipal Code violations exist and that civil penalties should be assessed per the enumerated criteria. In this way, due process requirements are afforded all violators *Leppo v. City of Petaluma*, 20 Cal. App. 3d 711 (1971) (notice and a hearing required before city can abatement of a public nuisance). Due process considerations are especially important where violators cannot be located or fail to pay assessed civil penalties.

Civil penalties shall accrue at a daily rate established by the City Manager's Hearing Officer until the property is brought into compliance. This provides a fair amount of flexibility and discretion in assessing the amount of civil penalties, taking into consideration factors such as the severity and duration of the violation. A maximum penalty has been included so that our ordinance is consistent with state statutes and the California

Constitutional prohibition against excessive penalties.

If the violator refuses to pay the accrued civil penalties, the City can collect by filing a civil action against the individual and/or filing a lien with the County Auditor. This ordinance marks a significant departure from traditional enforcement techniques which rely upon state statutes as the basis of special assessments and liens. See Government Code section 38773.5. Our research has concluded that as a charter city, we can create our own lien to enforce the Municipal Code and collect it in the same manner as municipal taxes. See C.S. Rhyne, The Law of Local Government Operations section 23.18 (1980). All penalties collected shall be divided between the Nuisance Abatement Superfund (San Diego Municipal Code section 11.16.1) to abate public nuisances and to the City departments that investigated the specific case to partially cover their enforcement costs.

The City Attorney's Office shall continue to work closely with the various City departments in structuring the administrative process to implement this ordinance.

Respectfully submitted,
JOHN W. WITT
City Attorney

DC:lja:639(x043.1)
Attachment
RC-88-51