

Office of

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: August 12, 1993

TO: Mary Valerio, Planning Department

FROM: City Attorney

SUBJECT: Fees Prescribed by the Health and Safety Code

This correspondence has been prepared in response to your letter dated June 30, 1993, in which you requested an opinion regarding two issues. First, whether the Neighborhood Code Compliance Department ("Department") could charge a fee in accordance with Health and Safety Code section 17951 for inspections (including the first inspection) performed on valid complaints. Second, whether we would foresee any problems with your Department charging a fee for issuing a permit for altering or replacing earthquake resistant systems.

Health and Safety Code section 17951(b) permits the governing body of a county or city to prescribe fees to defray the cost of enforcing the provisions of the Building Code. However, the amount of the fees prescribed cannot exceed the amount reasonably required to defray the cost of such enforcement and the fees cannot be levied for general revenue purposes. (Section 17951(c).)

The term "enforcement" is defined in Health and Safety Code section 17920(e) as the effort to secure compliance including reviewing plans and permit applications, "responding to complaints and other legal process."

Assembly Bill 1844 proposes to amend Section 17951(b) by adding the following language:

The cost of enforcement required by this part may be financed by . . . fees imposed for inspections in order to investigate a complaint of a violation of a building . . . , fees to inspect a dwelling unit to ensure the correction of a noticed violation . . ."
(Emphasis added.)

This Bill is presently in the Senate Appropriation Committee and is scheduled to be heard on August 16th by the State Assembly. It has already been passed by the Senate.

Arguably, inspecting a person's property to investigate a complaint and to ensure correction of a noticed violation falls within the definition of "enforcement" and the costs associated with such activity may be defrayed by charging a fee. Moreover, Assembly Bill 1844 is likely to pass and will specifically provide that the costs of inspections may be defrayed by imposing fees.

If your department is considering charging a fee to defray the cost associated with first inspections, we suggest you check to see whether the City is currently charging a fee to defray the cost of "enforcement" and whether this may include the cost of inspections. In addition, your department should consider what will be done in cases where no violations were found or a frivolous complaint was filed.

Finally, this fee must be adopted by the City Council in accordance with Government Code section 66016. Government Code section 66016 provides that prior to levying a new fee or service charge a local agency shall hold at least one public meeting.

Notice is required to be mailed to any interested party at least 14 days prior to the meeting.

At least 10 days before the meeting the local agency is required to make available to the public, data indicating the amount of cost required to provide the service for which the fee is levied and the revenue sources anticipated to provide the service. The new fee cannot exceed the estimated amount required to provide the service for which the fee is levied.

You also asked whether we would foresee any problems with your Department charging a fee for permits issued to replace earthquake resistant bracing systems for mobilehomes pursuant to Health and Safety Code section 18613.

Health and Safety Code section 18613(f) provides that:

The department shall establish a schedule of fees for the permits required by this section commensurate with the cost of the enforcement of this section and the regulations adopted pursuant to this section. Where a city, county or city and county is responsible for the enforcement, the city . . . may establish a schedule of fees not to exceed the actual costs of

enforcement and not exceed those fees established by the department where the department is the enforcement agency. Permit fees and reinspection fees shall be paid to the enforcement agency by the permittee.

"Department" is defined in Health and Safety Code section 18206 as the Department of Housing and Community Development.

If the City of San Diego has been designated by the Department of Housing and Community Development as the enforcement agency, then the City can charge a fee not to exceed the actual costs of enforcement. In addition the fees cannot exceed those fees established by the Department of Housing and Community Development. (Health and Safety Code section 18206.) Therefore, you should find out what the Department of Housing and Community Development charges and what factors were used in determining their fees. Also, we suggest that you follow the procedure outlined by Government Code section 66016 when levying the fees described in Health and Safety Code section 18613.

If you have any further questions let me know. In addition, I have attached copies of the sections cited in this memorandum for your convenience.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

AYM:ps:141

Attachments

MS-93-7