



City of Sebastopol

Planning Department

Meeting Date: Meeting of January 13, 2015
To: Planning Commission
From: Kenyon Webster, Planning Director
Subject: Information Concerning Revocation Procedures
Recommendation: Receive Information

Introduction: This staff report responds to a request from the Commission for information regarding standards and procedures for enforcement and revocation of Planning permits.

Background: At the December 9 Commission meeting, in the context of a review of standards for gas stations and car washes, the Commission received public comments regarding reported adverse effects from operations of an existing gas station, including contentions that the operation may not be in compliance with conditions of approval. This specific matter was not on the Commission's agenda for discussion, however the Commission was concerned about the issues raised, and asked that on a future agenda, information be provided regarding what options the City may have in addressing potential violations of the Municipal Code and/or Planning permit conditions of approval, including Revocation procedures. This memorandum provides information on that topic.

Zoning Ordinance and Permit Enforcement: There are a number of considerations in regards to zoning enforcement. The City of Sebastopol has limited resources, and unlike some larger jurisdictions, no dedicated zoning enforcement personnel. Likewise, the City Attorney (who has no staff and currently is also the City Manager) has no budget for prosecution of zoning violations. When time permits, the Building Official (the only Building professional on City staff, and who is shared with the City of Cotati) performs some zoning enforcement field inspection, and has the ability to write citations with an associated fine. Persons contesting such citations may request a court hearing. In some situations, staff will attempt to informally mediate zoning disputes or enforcement situations. The City Attorney also has the ability to file a court action regarding violations.

Except for situations where there is a significant immediate threat to public safety, enforcement is typically a graduated process, is conducted when resources permit, is related to the significance of the issue, and occurs in the context of other duties. The first step is verification. Not all complaint situations turn out to be violations of Zoning Ordinance provisions or conditions of approval. There may be no violation, or in the case of ongoing uses, uses are not static, can and do evolve over time, and it would be unworkable and unrealistic if any change required review or hearings by the City.

In addition, verification of a violation can be difficult. For some situations, absent a court order, owner or resident permission is required to enter a property. In other situations, issues may be sporadic rather than continuous, making observation of an alleged violation problematic.

If there appears to be a violation, in most cases, the person responsible for an alleged violation is given several opportunities to voluntarily comply and correct the situation, generally by means of several letters with deadlines for action, or other contact from Planning staff. If compliance is not achieved or no response is made, the next step is usually a communication from the City Attorney. Subsequently, if necessary, the Building Official may be requested to write a citation, however this requires his personal verification, and in some cases, citation of the specific responsible party, which can sometimes be problematic. As a separate procedure, the City Attorney can also file a court action to seek an injunction against the activity causing the violation. The City Attorney has also filed actions on some past code violations using 'public nuisance' as grounds for proceeding.

Another procedure is 'revocation' of a Planning permit. Municipal Code Section 17.250.050 provides a procedure for the Planning Commission to revoke Use Permits, and for the Design Review Board to revoke Design Review approvals. This code section provides minimal detail on revocation standards and procedures, however the following would generally apply:

- Revocation procedures would only be undertaken after verification of an issue, after other efforts (described above) had been unsuccessful, and after review by the City Attorney. To staff's knowledge, the City has not engaged in a revocation procedure.
- A revocation procedure is similar to a trial, where the reviewing body is acting like a judge, and the applicant's right to due process is a critical consideration. Among other things, the applicant or their representatives may 'cross examine' witnesses.
- Given the role of the City Attorney in advising other City staff in enforcement proceedings, or taking a role himself, thereby not being a neutral party, outside legal counsel would likely be required to be retained at the City's cost to advise the hearing body.
- The decision of the hearing body is appealable to the City Council.

Depending on the type of permit, the Commission or the Design Review Board sits in judgment of a revocation proceeding. Thus it is important the both bodies or members of the bodies not make statements or take actions that might be construed as pre-judging alleged violations.