

palisades preservation association

March 28, 2011

Budget and Finance Committee,
Los Angeles City Council,
City Hall, Room 395

Re: Administrative Citations Enforcement Procedures Ordinance
Council Files 10-0085 and 10-0600

Dear Committee Members,

The Executive Board of the Palisades Preservation Association voted unanimously to urge your Committee to vote against the enactment of the proposed Administrative Citations Enforcement Procedures Ordinance (ACE). While the members of the Board recognizes the need for increased code enforcement, the Board feels that the ACE ordinance will not by itself improve code enforcement in the City and will just add another layer of enforcement that will lead to more confusion and perhaps, more cost.

As is set forth in the Analysis of the Administrative Citations Enforcement Procedures Ordinance attached hereto, the primary reasons that code enforcement is not working in the City are (1) a shortage of enforcement officers; (2) lack of an efficient collection system to collect fines, fees, and penalties; and (3) the inability of the City Attorney to prosecute misdemeanors for minor offenses, which most code violations are.

From reading the report of the City Attorney accompanying the ordinance, it is clear that the reason that the enactment of the ACE ordinance is principally being urged by the City Attorney because it will relieve that office of having to prosecute code violations. The ACE ordinance will not, however, decrease the workload of the departments doing the enforcement and in fact will increase the workload.

As set forth in the attached Analysis of the ACE ordinance, the ACE ordinance will not be any more effective than the existing code enforcement procedures unless more enforcement officers are provided and an efficient collection system is created. As to the City Attorney's problems, they can be best solved by reducing the punishment for minor violations to an infraction. In fact that should be done even if the ACE ordinance is adopted.

The attached Analysis also sets forth a number of problems with the proposed ACE ordinance as well as a number of recommendations for improving the ordinance. However, even if those corrections are made, the Board is of the opinion that the ACE ordinance is not only unnecessary, but subject to abuse.

Respectfully submitted,



JACK ALLEN, *President*

post office box 1256, pacific palisades, california 90272
phone no. (310) 454-2712; email ppa90272@verizon.net

**ANALYSIS OF
ADMINISTRATIVE CITATIONS ENFORCEMENT PROCEDURE ORDINANCE
by
Jack Allen**

Currently enforcement of the provisions of the Los Angeles Municipal Code (LAMC) is practically non-existent. But it has been that way for the last 50 years. During that time, hundreds of thousands of violations have occurred and many have never been corrected. Enforcement is so lax that numerous violations occur simply because the violators know that the Code is not being enforced. Obviously the enforcement system is broken and needs fixing.

To fix the situation the City Attorney is proposing the adoption of an Administrative Citations Enforcement Procedure (ACE) Ordinance. However, before evaluating the proposed ordinance it is necessary to examine the current enforcement procedures and determine why they are not working in order to ensure that the adoption of the proposed ordinance will work any better than the current procedures.

Current Code Enforcement Procedures.

At present, the City uses at least three methods of enforcing the LAMC. The first is an administrative process. The second is a criminal process. The third is the use of civil penalties.

As stated in the Council Motion, Code enforcement is largely performed by the Department of Building and Safety. Department of Building and Safety issues Notices to Comply for violations of the Building Code and Zoning regulations in which the alleged violator has 15 days to comply or must pay a non-compliance fee of \$550 for all violations other than grading and slope failures which are considerably higher.¹ The violator has four choices. They are:

1. Correct the violation within 15 days in which case the violator does not have to pay any fees.
2. Just pay the non-compliance fee and not correct the violation. Generally there is no follow up if the fee is paid.
3. File an appeal to the Director of Department of Building and Safety within 15 days which suspends the payment of the non-compliance fee until the Director decides the appeal.
4. Do nothing. The Department of Building and Safety is supposed to charge a late fee equal to two times the non-compliance fee if the fee is not paid within 30 days and pay a collection fee equal to half the non-compliance fee. Interest at one percent per month begins accruing after 60 days of non-payment.

¹LAMC Sec. 98.0411. The purpose of this fee is to recover a portion of the cost of any additional inspection and administrative or appeal proceedings incurred by the Department in order to enforce the Code or secure compliance with the order. No more than one such fee shall be collected for failure to comply with an order.

If the violator does not comply or pay the non-compliance fee, there is no follow up to ensure compliance or to collect the fee and the penalties and interest.

Generally, the Department of Building and Safety enforces the regulations only when a complaint is made to the Department or unless a violation is discovered by an Inspector during an inspection made as a result of construction pursuant to a building permit.

The Department of Building and Safety also has the authority to make arrests and request criminal prosecution.² However, it is rarely done because the City Attorney refuses to prosecute most cases unless they are major violations.

A person issued a Notice to Comply by the Department of Building and Safety can appeal the Notice to the Director of the Department of Building and Safety.³ If the violation violates the Building Code or the Fire Code, and the Director denies the appeal, the person can appeal to the Board of Building and Safety Commissioners.⁴ If the violation involves zoning regulations and the Director denies the appeal the person may appeal to the Director of Planning.⁵ The appeal is heard by the Zoning Administrator. If the Zoning Administrator denies the appeal, the person can then appeal to the Area Planning Commission.

In addition, a person issued a Notice to Comply can seek a variance or a slight modification from either the Department of Building and Safety if the violation involves the Building Code, or from the Zoning Administrator, if the violation involves the Zoning regulations.

The Department of Transportation already has an Administrative Citation Enforcement Procedures very similar to those in the proposed ordinance.⁶ That Department can also issue citations for misdemeanors and infractions.⁷ It can also issue citations for civil penalties under the California Vehicle Code for illegal parking that are enforced by the Superior Court.⁸

The Housing Department has extensive Administrative Enforcement Procedures.⁹ It also can levy civil penalties and fines.¹⁰ It can also seek criminal penalties.¹¹

² LAMC Sec. 98.0408

³ The Director does not conduct a hearing. The appeal is decided on the documents submitted.

⁴ LAMC Sec. 98.0403.1

⁵ LAMC Sec. 98.0403.2

⁶ LAMC Sec. 80.06.1

⁷ LAMC Sec. 80.01.1

⁸ LAMC Sec. 89.60

⁹ LAMC Sec. 161.801 et seq.

¹⁰ LAMC Sec. 161.905

¹¹ LAMC Sec. 161.906.

The Public Works Department can levy fines which are appealable to the Board of Public Works.

The Department of Animal Services officers have the authority to make arrests and issue citations. The Department also has authority to impose civil penalties.

Every violation of the LAMC is deemed a misdemeanor unless otherwise specified.¹² Violations of the Code are deemed continuing violations and each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of \$2,500 for each and every offense.¹³

Thus, the City already has extensive procedures available to enforce its Codes. The issue then is why is enforcement so lax.

Why Code Enforcement Is Not Working.

The lack of enforcement is primarily due to three factors. First, is that it is a low priority and few employees are assigned to that duty. This is contrary to what happens in many cities in which code enforcement is given a high priority.

Second, for those violations that require prosecution, the City Attorney has been and is unwilling to commit the resources to prosecute the violations. It is interesting because in other cities, city attorneys vigorously prosecute violations. Consequently, in those cities, violations are much rarer because everyone knows that that enforcement is strict and prompt so that there are far fewer violations and the necessity for enforcement by the city attorney for prosecution is rare.

According to the report of the Chief Administrative Officer:

"...cases currently referred to the City Attorney's Office for review and filing with the court can take up to one year before being scheduled before a criminal court and adjudicated. This delay is due to other higher level cases being prioritized within the court system."¹⁴

This is probably because of the approximately 1,000 different Code sections that can be violated, most of them are misdemeanors which provide for up to six months in jail and a \$1,000 fine. The City Attorney has complained that he does not want to criminalize many of the violations and further, that the courts complain about prosecuting minor violations. This is understandable because there are many Code sections which if violated, that should be treated as infractions, at least on the first violation. The fines for an infraction of a city ordinance are set in Government Code Section 36900 although in many instances, the LAMC sets a lower

¹² LAMC Sec. 11.01.(m)

¹³ LAMC Sec. 11.01.(l)

¹⁴ CAO Report of March 7, 2011, p. 3

amount, and there is no criminal record.¹⁵

The following are just a few of the misdemeanors which should be classified as infractions: failure of an owner to clean the sidewalk in front of property¹⁶; urinating in public¹⁷; selling goods in a public park¹⁸; soliciting in a public park¹⁹; not sitting on a regular seat while riding a bicycle²⁰; keeping an unlicensed dog²¹; feeding a pigeon in the Downtown area²² operating a noisy powered hand tool²³; and feeding a wild racoon, opossum, or a skunk²⁴

If the LAMC was revised to make many minor violations infractions or give the City Attorney the option of filing a misdemeanor or infraction, as is done with a number of violations, then it would make prosecuting the offenses much easier.

Third, there is no effective system to collect unpaid fees, fines, penalties, and interest. While the average citizen or homeowner, who is not aware that the City is lax in the collection of fees and fines will promptly pay a fee or fine, many violators are aware of such laxness and are willing to risks, which are at present, minimal.

In many cases the City also does not leverage to force payments. Unlike parking violations, which if unpaid, the City can notify the Department of Motor Vehicles that the fine is unpaid in which case DMV refuses re-registration of the vehicle involved in the offense. If a violation results in a conviction, the courts will enforce the fine. The City also has leverage to collect unpaid fees and penalties for building and zoning violations as a condition of a violator obtaining new permits, having to pay the unpaid fees and penalties. However, there does not

¹⁵ (b) Every violation determined to be an infraction is punishable by (1) a fine not exceeding \$100 for a first violation; (2) a fine not exceeding \$200 for a second violation of the same ordinance within one year; (3) a fine not exceeding \$500 for each additional violation of the same ordinance within one year.

“(c) Notwithstanding any other provision of law, a violation of **local building and safety** codes determined to be an infraction is punishable by (1) a fine not exceeding \$100 for a first violation; (2) a fine not exceeding \$500 for a second violation of the same ordinance within one year; (3) a fine not exceeding \$1,000 for each additional violation of the same ordinance within one year of the first violation.”

¹⁶ LAMC Sec. 41.46

¹⁷ LAMC Sec. 41.47.3

¹⁸ LAMC Sec. 41.43

¹⁹ LAMC Sec. 42.14.1

²⁰ LAMC Sec. 80.27

²¹ LAMC Sec. 53.84

²² LAMC Sec. 53.48

²³ LAMC Sec. 112.05

²⁴ LAMC Sec. 53.06.5

appear to be a consistent pattern of this being done.

Another problem is that enforcement of the LAMC is divided up between the departments with each department enforcing only those regulations that apply to that department. Further, violations of the LAMC which do not fall under any particular department, are enforced by the Police Department. Enforcement of the LAMC is the lowest priority with the Police Department.

Moreover, with budget cuts reducing the number of employees and police officers available to enforce the LAMC, the situation will become worse.

It has been suggested that a separate unit be formed in the City to do code enforcement. It has been suggested that code enforcement officers have the authority to cite violators for any violation of the LAMC. However, this has its problems because to a degree, it requires specialized knowledge to enforce various regulations. Hence, the reason that code enforcement is assigned to the department that has specialized knowledge of the regulations that apply to that department.

Will Adding the ACE Program In Addition to the Existing Enforcement Programs Improve Enforcement?

The purpose of the ACE program is described by the CAO as follows:

“The purpose of the Ordinance is to provide City enforcement officers an alternative enforcement method to issue administrative citations within their normal scope of work rather than issuing a verbal warning, a written Notice to Comply or other type of citation... in order to protect and ensure public health and safety.”²⁵

This statement however, begs the question. Each of the current enforcement programs are for the purpose of protecting and ensuring public health and safety. And citations issued under the ACE program are also required to be issued in writing and in fact are more complicated than Notices to Comply.

More efficient and faster compliance.

According to the CAO, another benefit of the ACE program is:

“Currently the process to enforce low level violations is labor intensive and time consuming. However, under the ACE program, enforcement officers, police officers and inspectors will have the ability issue administrative citations for low level violations, while achieving real-time compliance. For example, Animal Services will have the ability to enforce violations immediately rather than issue a Notice to Comply for circumstances where public safety is a concern.”²⁶

²⁵ CAO Report of March 7, 2011, p. 1

²⁶ CAO Report of March 7, 2011, p. 2

The purpose of issuing Notices to Comply is that the violations require time to correct. Issuing Administrative Citations is not going to speed up the process. As the City Attorney states in his Report,:

“...when there is a ‘continuing violation,’ the municipality must provide a ‘reasonable period of time in which’ to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, ‘when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues,’ that do not create an immediate danger to health or safety.”

The example given by the CAO of Animal Services is a poor example. Animal Services has authority to issue only one Notice to Comply which is have a dog or cat neutered or spayed. The violator has 45 days to do that.²⁷ Every violation regarding Animal Services has a remedy and if immediate compliance is necessary, Animal Control has authority under the Code to obtain that compliance.

Deterrence of violations.

The CAO also contends that the ACE ordinance will “deter behavior and repeat violations, thereby reducing the amount of time and effort spent on enforcement.” However, neither the CAO nor the City Attorney provide any evidence that will happen. The current fees, fines, and penalties are not deterring offenders. The LAMC provides for significant increases in fees, fines, and penalties for repeat offenders. yet have not succeeded in deterring repeat offenders.

The City Attorney states that the ACE ordinance will provide “a penalty structure severe enough to deter future violations of City code enforcement regulations.”

That is a myth — that severe penalties deter code violations. A number of studies have shown that severe fines are not a deterrent for two reasons. First, are two classes of violators. The average violators of the Municipal Code do not even know that they are violating the Code. Very few even know that there is a Municipal Code, much less what the fines are. It is not like the State Motor Vehicle Code which every driver must pass a test on. Most do-it-yourselfers remodeling a room or a kitchen or re-roofing their house or replacing a retaining wall know that they need a permit to do so. The Uniform Building Code is practically a secret document known only to those who can afford to buy a copy. Because of copyright restrictions, it is not available on-line. Even though the LAMC is on-line, very few people know that or even how to access it.

Therefore, if violators know that they are violating the Code, they are not going to know the amount of the fines so increasing the amount of the fines and penalties is not going to deter most violators. Perhaps the reason that when a violator is issued a Notice to Comply, the violator can avoid paying any fine or fee if the violation is promptly corrected, is because in the past, the City Council, in its wisdom, recognized that the average violator was unaware of the violation, and was more interested in getting the violation corrected than punishing the unknowing violator.

²⁷ LAMC Sec. 53.15.(b).(7)

**Summary of Analysis of
Administrative Citations Enforcement Procedure Ordinance
Council Files 10-0085 and 10-0600**

As a result of many complaints about the lack of code enforcement, the City Council is exploring new methods of improving enforcement. Currently, the City of Los Angeles uses at least four methods to enforce the provisions in the Los Angeles Municipal Code (LAMC). They are administrative processes, including Notices to Comply, civil penalties, and criminal process. None of them are providing effective code enforcement and haven't for the past 50 years, resulting in hundreds of thousands of violations which have never been cited or corrected.

The attached Analysis of Administrative Citations Enforcement Procedure Ordinance examines the current code enforcement procedures and reveals that the principal reasons that code enforcement is non-existent for all practical purposes are (1) a severe shortage of code enforcement officers, including police officers; (2) the failure to have an efficient system for the collection of fines, fees, and penalties; and (3) many minor offenses are classified as misdemeanors rather than infractions, making them difficult for the City Attorney to prosecute.

If these shortcomings were corrected, the current system of code enforcement would probably be as efficient, and possibly superior to the proposed Administrative Citations Enforcement Procedure Ordinance.

Because of the current inability of the City Attorney and the City departments to enforce the LAMC, the City Attorney is proposing to add a fourth method of enforcement to overlay the existing methods — the Administrative Citations Enforcement Procedures (ACE). Unfortunately, many see the ACE as a panacea for all code enforcement problems but unless the structural problems that plague the existing code enforcement procedures are corrected, the ACE will not be any more effective than the current code enforcement procedures.

The ACE ordinance basically provides for a single citation procedure in which the person cited will have to either immediately cease the violation, or be given a reasonable amount of time to correct the violation. The person cited may request an Initial Review from the City Attorney. If the City Attorney denies the person cited relief, the person can appeal to an Hearing Officer. If the Hearing Officer does not grant relief, the person cited may appeal to a court.

If the person cited can correct the violation within the time prescribed, no fine will be levied. However, any person cited must pay the enforcement costs called the Administrative costs. These costs are not fixed and can vary from case to case. There are no standards set forth in the ordinance for fixing the costs. If the person cited appeals and loses, that person must pay all the costs incurred by the City for the appeal.

The fines can range from \$250 to \$12,000 for the first violation depending on the type of violation. For subsequent violations fines can range from \$500 on a second violation to \$24,000. Third violations range from \$1,000 to \$48,000. In certain cases where a permit was not obtained, the fine is multiplied by four.

The Hearing Officer has the discretion to reduce the fine but also has the discretion to increase the fine as much as \$1,000.

Examining the proposed ACE ordinance, the following is a summary of the arguments for and against adopting the ACE ordinance. It should be noted that in the attached Analysis,

the Analysis does not agree with either the City Attorney or the Chief Administrative Officer as to all the merits of the ACE ordinance.

1. ACE will create a consolidated and uniform system of code enforcement.

Pro: It will provide a uniform method of issuing citations for code violations and a uniform system for hearings on appeals from such citations in contrast to the different procedures each department has developed for enforcing violations of code provisions over which they have jurisdiction.

Con:

- Each department has an expertise concerning the code sections which the department administers and is better able to judge a violation than an Administrative Hearing Officer who is not familiar with the way the department administers the code sections within its jurisdiction.
- Violators would not have the opportunity to request variances, slight modifications, and other forms of administrative relief as a means of correcting the violation.
- Violators would not have the right of appeal to the Board of Building Commissioners, the Area Planning Commissions, or the Board of Public Works, as the case may be.

2. Implementation of ACE will result in greater efficiencies and faster compliance.

Pro: The current process of enforcing low level violations is labor intensive and time consuming. However, under the ACE program, enforcement officers, police officers and inspectors will have the ability issue administrative citations for low level violations, while achieving real-time compliance. Issuance of an administrative citation will deter behavior and repeat violations thereby reducing the amount of time and effort spent on enforcement.

Con:

- The process of enforcing violations under the current procedures is no more intensive and time consuming than enforcement under ACE and may even be less. What is time consuming and labor intensive under the current procedures is the filing of misdemeanor complaints on low level violations. This can be corrected by making low level violations infractions rather than misdemeanors.
- The issuance of administrative citations will not deter violations since most violations result from the average citizen's ignorance of the provisions of the LAMC. One cannot be deterred from violating a code provision that the violator is unaware of. ACE is no more effective than the current enforcement procedures in punishing repeat offenders.

3. ACE will result in greater revenue for the City during the budget crisis.

Pro: The ACE program will allow for the ability to charge administrative fines for any municipal code violation along with the ability to recapture enforcement and administrative costs for departments where none may currently exist.

Con:

- Unless the City creates an effective collection program, the amount of fines and fees generated by ACE probably not increase significantly and will not cover the costs of enforcement. Moreover, an effective collection program would also significantly increase the amount of revenue under the current enforcement programs.
- While it is true that ACE will permit departments to recapture enforcement and administration costs in the few enforcement programs that currently do not have or require them, there is a policy reason for not imposing fines and enforcement costs in many cases. The City Council in its wisdom, has waived fines and enforcement costs on Notices to Comply because the Council is aware that most violations result from ignorance of the Code and the Council is more interested in securing prompt compliance than punishing the violators.
- There are concerns that the ACE will become a "cash cow" as it has in other cities, such as Bell, and other local agencies, and that it will be vigorously and arbitrarily and unfairly enforced to maximize the revenues from the program, similarly to the City's parking enforcement program.

4. ACE will make better use of legal resources.

Pro: The Office of the City Attorney is mandated to prosecute all misdemeanors and other criminal violations within the jurisdiction of the City. This mandate ties up resources which might be used more effectively elsewhere. The ACE program would free up resources (city enforcement officers and city attorney staff) for more serious criminal and civil actions.

Con:

- There are approximately a 1,000 sections in the LAMC which are subject to prosecution if violated. Most of violations are classified as misdemeanors. Most of the more common violations which are misdemeanors are minor such as failure of a homeowner to clean the sidewalk in front of a home. If these minor violations were classified as infractions, or the City Attorney is given the discretion prosecute either as a misdemeanor or an infraction, the number of cases that would require prosecution would drop dramatically.
- ACE requires that the City Attorney conduct an Initial Review of any citation if requested to do so by the person cited, which the City Attorney is not required to do under the current procedures. It can be expected that a considerable number of those cited will request such a review which will seek such a review. Thus, any time saved by the City Attorney from prosecuting misdemeanors will be lost in handling Initial Reviews.
- Under the current enforcement procedures, most violations are handled administratively and the only court review that a violator has, is to seek a Writ of Mandamus which is very expensive. However, under ACE, the Government Code sets forth a simple and inexpensive means of appealing the decision of an Administrative Hearing Officer to the courts which probably mean that many decisions will be appealed to the courts because of the heavy fines and enforcement costs. Thus, the City Attorney may spend more time on defending appeals than was spent on prosecuting misdemeanors.

Other concerns:

There are a number of other concerns about the ACE ordinance. These are:

- The ordinance makes every day that the violation exists after the citation is issued subject to an additional fine and fees. What is not clear is whether this applies during to each day that the violation is not remedied, even if the violation is remedied within the time period given for compliance.
- Fines are draconian, particularly for violations involving improvements to, buildings, structures, or land where required permits were not obtained. The fines specified in the ordinance are multiplied by four so that the fine for an over height fence could be between \$4,000 and \$8,000 plus the enforcement costs.
- The Square Footage of the Improvement or Use in Violation Table is vague and needs to be clarified. Is the improvement or use include the entire property, or the entire building, or just the space in violation? How is it to be measured?
- What constitutes a Second and Third Violation? Is it any violation of the LAMC? Is it a repeated violation of the same Code section?
- The 15 day appeal periods are too short, especially for homeowners, who may need time to research the alleged violation and contact the enforcing officer, which often is hard to do, and to get professional help. Appeal periods should be 30 days.
- Administrative Costs should be fixed at certain amount, not more than \$100 plus 10% of the fine. The ordinance leaves it wide open. Usually the fine more than covers the costs of enforcement so assessing administrative costs is overkill. Most violations require little more than a visit to the property and the issuance of the citation so costs are minimal.
- Hearing Officers should not be allowed to increase the amount of a fine. No court can increase the fixed amount of a fine so neither should a Hearing Officer. It smacks of trying to discourage appeals particularly in cases where the appeal is meritorious.
- Revenues from code enforcement should not go into the General Fund but should be used for code enforcement purposes. Putting these revenues into the General Fund gives the appearance that the only purpose of the ACE is to raise revenue.
- All misdemeanors that are minor offenses should be either reduced to infractions, or the City Attorney should be given the discretion to charge a violation either as a misdemeanor or as an infraction.

March 27, 2011



JACK ALLEN

Moreover, many contractors, in order to keep the costs down, do not inform owners that building permits are required for almost any work done on a house.

The second class of violators know that they are violating the Code but believe they can get away with it so the amount of the fines and penalties does not deter them. Therefore, the effect of severe fines and penalties rarely is a deterrent.²⁸

On the other hand, studies show that heavy fines and penalties in fact, encourage appeals and court actions, particularly among violators with large pocketbooks. They can afford to hire attorneys and expert witnesses and if any flaws can be found, they will seek to exploit them in court. This could result in an increase in the workload for the City Attorney above the workload caused by the current code enforcement procedures.

However, the way the ACE ordinance is structured, it will in all probability, discourage appeals from the less affluent who cannot afford to pay the additional enforcement costs, if they lose. This will result in injustices because there will be cases where the violator didn't cause the violation but was either cited erroneously or arbitrarily. Anyone considering adoption of the ACE ordinance should put themselves in the shoes of such a person.

Better use of legal resources.

The CAO argues that the ACE ordinance make better use of legal resources stating:

"The Office of the City Attorney is mandated to prosecute all misdemeanors and other criminal violations of the Charter and ordinances within the jurisdiction of the City. This mandate ties up resources which might be used more effectively elsewhere."

The City Attorney states in his Report that adoption of the ACE ordinance would:

"provide a viable alternative to traditional misdemeanor prosecution that is inherently lengthy, costly, and often ineffective for many less serious violations."

Thus, what really strains the resources of the City Attorney is prosecuting misdemeanors. Therefore, the remedy is to change many of the misdemeanors involving minor offenses to infractions.

Also, the City Attorney currently is rarely involved in administrative enforcement procedures. But under the proposed ACE procedures, violators will have an opportunity for an Initial Review by the City Attorney of the Administrative Citation. It can be said with some certainty that a majority of those cited will seek such a review and this will really place a strain on the City Attorney's office, much more than occurs presently.

Moreover, rarely do violators given a Notice to Comply go to court after exhausting their administrative remedies. That is because it is necessary to file for a Writ of

²⁸ On the other hand, fines of less than \$100 have been found not to be a deterrent because they trivialize the offense. Examples are the \$25 fine for using a cell phone while driving or using a gasoline leaf blower.

Administrative Mandamus which invariably requires hiring an attorney and is a costly procedure. So it is rare that the City Attorney has to appear in a case involving a Notice to Comply. However, filing an appeal from the decision of the Administrative Hearing Officer is relatively easy and is much less expensive so it is likely that the City Attorney will be much more involved in court appeals which will further strain the resources of that office.

Cost Benefits.

The CAO states that:

“The ACE program will allow for the ability to charge administrative fines for any municipal code violation along with the ability to recapture enforcement and administrative costs for departments where none may currently exist.”

There are few cases in which departments do not have the authority to recover enforcement and administrative costs. Moreover, with few exceptions, the amount of the fees, fines and penalties more than cover the costs. The problem however, is that if the violator timely complies, then the violator pays nothing. That is one aspect of the ACE that is different from existing code enforcement procedures in that each violator must pay a minimum fine.

There are pros and cons to this. On one hand every violator should pay at least a minimum fee to cover the cost of enforcement. On the other hand, as previously stated, the average violator usually doesn't know that a violation has been committed and it is better public policy to encourage the correction of the violation than to punish the violator. The problem with the latter however, is that persons who knowingly violate the Code do not get fined.

It makes sense to make repeated violators pay severe penalties. But the problem is for the enforcing officers to know when there is a repeat violation. The Department of Building and Safety maintains a database of violations for each property which is on its web page so it is possible for the enforcing officer to determine whether or not there is a repeat violation. However, experience has shown that enforcing officers do not take the trouble to look it up.

Additional Revenue.

The CAO states that the ACE ordinance will generate additional revenue:

“Under the current process the City receives 90 percent of the base fine, while the additional statutory penalty assessments and any additional fees resulting from a misdemeanor conviction go to various County and State funds. Under the ACE program, the City could receive 100 percent of the administrative fine.”

The City now receives all the fees, fines, and penalties for violations enforced using current enforcement methods. Since the City Attorney rarely prosecutes violations, the amount lost from base fines is minimal.

However, what concerns opponents of the ACE ordinance is that it will be used as a revenue source and like parking violations, will be vigorously and unfairly enforced. The concern is that the ACE ordinance will be a "cash cow" as it has in other cities, counties, and local agencies and that Los Angeles will become another Bell. Opponents feel that this is the real impetus behind the ordinance which is to generate revenue.

But none of this will transpire unless the City makes major improvements in its collection system. The City needs to set up a centralized collection system with adequate personnel to do the work required. It should consider whether or not to use a collection agency, which will reduce the amount of revenue, perhaps significantly. Or it can consider filing small claims actions to collect unpaid fines and fees.

However, if the City improves its collection system, the same improvements would make the current code enforcement a much better revenue producer.

Additionally, unless the City substantially increases the number of enforcement officers, many violations will continue to occur and exist and the additional revenue will not be generated. That may be a budget buster.

A uniform and centralized code enforcement system.

A principle argument that the City Attorney makes in support of the ACE ordinance is that it provide a uniform and centralized hearing system which can easily be overseen. He claims that the ACE ordinance will "provide a fair, expedient, and standardized" process. He decries the compartmentalized approach now in existence and the way each department has crafted its own enforcement procedures.

However, it can be fairly argued that while the ACE will provide an expedient and standardized process, it will be unfair. The reason is that the ACE Hearing Officers will not be familiar with the Code sections that are violated and the department policies underlying them. Moreover, as has happened with the Hearing Officers for parking violations, the ACE Hearing Officers will be under pressure to collect as much money as possible.

What is most bothersome is that persons cited under the Building Code, Zoning Code, and the Public Works regulations will not have the right of appeal to the Board of Building Commissioner, the Area Planning Commissioners, or the Board of Public Works respectively. In addition, persons alleged to have violated zoning regulations would rather take their chances on being heard by an Assistant Zoning Administrator than before an ACE Hearing Officer.

Further, the ACE process does not allow violators to seek variances, slight adjustments, or other administrative relief which can only come from the departments which have jurisdiction over the code being enforced.

Lastly, the objective of centralized enforcement as sought by the City Attorney will not be achieved because the ACE process does not supercede the other code enforcement processes that currently exist so that decentralized enforcement will still exist.

Will implementation of the ACE ordinance improve enforcement? Not significantly, if

at all. The City Council has to make commitments to improve both the collection process and provide additional enforcement officers. But if the Council does that, it would not need the ACE ordinance to improve code enforcement.

The ACE Ordinance.

Examining the proposed ACE ordinance, there are a number of flaws in the ordinance and a number of amendments that should be made if it is to be adopted.

Section 11.2.03.(C). Issuance of Administrative Citation.

This sub-section provides that:

"Each and every day an Administrative Violation exists shall constitute a separate and distinct offense subject to an Administrative Fine, as provided for in this Article."²⁹

This sub-section creates problems, particularly in relation to Sec. 11.2.03.(B) which states:

" If the Administrative Violation is remedied prior to the expiration of the correction period, no Administrative Fine shall be imposed."

However, this sub-section is qualified in Section 11.2.07.(B) which states:

"(B) Remedy the Administrative Violation. If a specified amount of time was provided to correct an Administrative Violation, as defined in Subsection (B) of Section 11.2.02, and the Responsible Person remedies the Administrative Violation within the time granted, no Administrative Fine shall be imposed. The Administrative Citation shall not be deemed to have been satisfied until the Responsible Person provides proof to the Issuing Department that, within the time allotted by the Administrative Citation, the Administrative Violation was satisfactorily remedied."

The problem is that a violator may not be not in good faith be able to correct the violation within the time granted, particularly if the violator has to hire an architect or an outside contractor to do the work. Thus, while the violator may correct the violation even if it is not within the required time period, the violator will be hit for Administrative Fines for every day from the date that the citation was issued. While it may be contended that citing Inspectors will be reasonable in allowing sufficient time to correct the violation, all too often that has not been the case.

Thus, a property owner could be forced to pay a contractor exorbitant amounts to complete the work necessary to correct a violation. This is particularly onerous if the property owner was not responsible for the violations.

In addition it creates vagueness. Sub-section (A) of Sec. 11.2.07 states that the violator

²⁹ The LAMC already contains a similar provision. See fn. 13.

can choose to satisfy the citation by paying the Administrative Fine within 15 days of the service of the citation. However, if the violation has continued since the Inspector wrote up the citation, the Administrative Fine should be the amount of the fine times the days from the write up to the date of payment. This needs to be clarified. When does the violation become continuing.

Section 11.2.04.(A) Administrative Fines.

To begin with the Administrative Fines exceed the amount the maximum amount of the fine if the violator was charged with a misdemeanor, which is \$1,000. But sub-division (2) of this section assesses ridiculously high fines, fines that should only be assessed if the violation is a felony.

This sub-section states:

(2) For Administrative Violations involving improvements to, or the use of, buildings, structures, or land for which permits or approval are required but were not obtained, the Administrative Fine levied shall be in the following amounts. For Administrative Violations involving improvements to, or the use of, buildings, structures, or land for which no permit could have been obtained, as determined by the Los Angeles Department of Building and Safety, and no variance was sought, the Administrative Fine levied shall be at four times (4x) the following amounts."

The multiple of four time the fine is draconian. Overheight hedges and fences fall into this category. The fines could vary from \$4,000 to \$8,000 for a first violation. Or another example would be installing a non-conforming toilet or water heater, the same draconian fines could be levied. Or not having the proper smoke detectors.

The Square Footage of the Improvement or Use in Violation Table is vague and needs to be clarified. Is the improvement or use include the entire property, or the entire building, or just the space in violation? How is it to be measured? For example, a remodeling of a 150 sq. ft. kitchen requires that the entire 2,500 sq. ft. house be rewired but only the kitchen is rewired. Is the fine \$250 or it \$3,000 or is it \$12,000?

How is an ten foot high side yard hedge measured which is 75 feet long and three feet wide? Is the square footage the 10' by 75' = 750 sq.ft. and thus the fine is \$2,000 or is it 3' by 75' = 150 sq. ft. which is a \$250 fine? Or is 75' by 2' = 150 sq. ft. which is the part that is in violation?

Additionally, what constitutes a Second and Third Violation? Is it any violation of the LAMC? Is it a repeated violation of the same Code section? What if the inspection of a building finds numerous violations of the Building Code and the Zoning Code. Does each violation stand on its own, or does each violation in addition to the first violation constitute a subsequent violation? The term needs to be defined.

Section 11.2.05 Service Procedures.

Personal service is a good idea because the alleged violator can get an explanation on

the spot from the enforcement officer. However, if the alleged violation is at a residence, the person or persons being cited may be away during the normal working day so if the enforcement officer attempts to serve the citation during the day, there may not be anyone to serve. When the Sheriff serves process, it is often done before people go to work or in the evening so that personal service is achieved. Will the City follow the same process in attempting to make service before then mailing service.

People who have received Notices to Comply in the mail often have difficulty contacting the issuing Inspector. Some have found that the telephone number for the Inspector shown on the face of the Notice is no longer in service.

Section 11.2.06.(A). Contents of Administrative Citation.

This sub-section provides:

"(A) The City Attorney shall develop policies and procedures to ensure that the contents of the Administrative Citation provide the Responsible Person with adequate notice regarding the Administrative Violation(s), potential liability, and all rights of appeal. "

Currently, Notices to Comply issued by Department of Building and Safety do not meet these standards. A copy of such a Notice is attached. Currently Department of Building and Safety only tells the alleged violator that there is a violation of a certain code section without setting forth exactly what the violation specifically is and where the violation is located on the property. In the situation shown on the attached Notice there were six hedges in the front yard, all of which complied with the Code.

Moreover, as is shown on page 2 of the Notice, the Appeal Procedures say nothing. To cite two sections in the LAMC, of which only one applies, as the procedure to follow gives the violator no information at all as to how to file an appeal or what the time period is to file.

Section 11.2.07 Satisfaction of the Administrative Citation.

There should be a sub-section (C) that suspends the time in which to comply if the violator applies for either a variance or a slight adjustment or any other remedy that would bring the violation into compliance. The violator would still be liable for the Enforcement Costs. If the violator does not succeed, the violator should be give 15 days after the relief is denied to pay the Administrative Fine and the Enforcement costs.

As an example, a homeowner buys a home in 1978. It has a six foot high retaining wall in the front yard setback which was constructed in 1928 to hold back the lot when the street was graded out. Now, the homeowner is issued an Administrative Citation which requires that the homeowner reduce the wall to 3'6" in height which will cost thousands of dollars and ruin the front yard of the house as well as reduce the value of the property. The homeowner argues that the Building Inspector misinterpreted the Code as to where the point that the height was to be measured from and that the wall. Neither Building Inspector nor the City Attorney agree with the homeowner.

Or take the homeowner who owned the property for 20 years and is now elderly and retired. The house is exactly the same as when the homeowner bought the property. The home needs to be re-roofed and the contractor gets a building permit. A Building Inspector comes to inspect the roof and notices that the living room juts out ten feet beyond the setback line for the rest of the homes on the block and issues the owner an Administrative Citation and gives the owner 30 days to correct the violation. The homeowner is faced with hiring an architect and a contractor but worse, the homeowner must obtain financing for the work, which is difficult to do because the homeowner is living on Social Security and is barely making mortgage payments.

In both cases, the homeowners should have the opportunity to seek relief from the Planning Director before having to comply. Filing for such relief should extend the time to pay any fines.

Section 11.2.08. Appeal of the Administrative Citation.

1. Appeal Periods:

The 15 day appeal periods are much too short. It has never been easy to file an appeal in the City of Los Angeles to begin with. Many violators are homeowners and they don't have an attorney immediately available to consult with, particularly an attorney that is familiar with the City bureaucracy and the LAMC. This is also a problem when the violator thinks that he or she was not in violation to begin with. Moreover, if it is necessary for an appellant to research the files of Department of Building and Safety or other City records, that adds to the time necessary to file an appeal.

All appeal periods should be at least 30 days.

2. Decision of the Administrative Hearing Officer.

There are three sub-sections which will discourage appeals even if in fact, the violations did not occur. The first are sub-sections (F).(2) and (3) which allow the Hearing Officer not only to impose a lesser fine but also impose a **greater** fine. To allow the imposition of a greater fine is only used to scare off appeals. Because the fines are already draconian, it serves no other useful purpose except to discourage appeals and that includes appeals which have merit.

The second sub-section that will discourage appeals is sub-section (5) which allows the Hearing Officer to determine the Enforcement Costs. This is a wide open door. Enforcement Costs include

"...direct and indirect costs incurred by the Issuing Department in investigating, inspecting, or abating any Administrative Violation, including, but not limited to, noncompliance fees as specified in Section 98.0411 and costs incurred in preparing for and attending an Administrative Citation hearing."

While theoretically an appellant who loses on appeal should pay all costs of the appeal, given that the extremely high fines, the City will easily recover its costs on appeal even if the appellant is only required to pay the initial Enforcement costs. Moreover, the Enforcement

Costs should be fixed at a minimum of \$100 plus 10% of the fine.

Additionally, the higher the costs, the more likely an affluent violator will choose to appeal an adverse decision to the Superior Court.

Section 11.2.10. Right to Judicial Review.

Sub-section (B) states:

"(B) Once an Administrative Order becomes final, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6."

That is not correct and is misleading. Government Code Section 53069.4 which governs appeals in Administrative Citation cases states:

"(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court.."

Pursuant to CCP §1094.6 a writ must be filed within 90 days so if an appellant followed the proposed ordinance, the appellant would be out of court.

Other Recommendations.

The Administrative Costs should be fixed. The ordinance lacks any standards for determining the Administrative Costs and a creative employee could balloon them to an exorbitant amount. If the purpose of the ordinance is to pay the cost of enforcing the provisions of the LAMC *and not to make revenue*, then the fines and Administrative Costs will more than cover the costs of enforcement. It is therefore recommended that the Administrative Costs be capped at \$100 plus 10% of the applicable fine.

Additionally, any revenues derived from the ACE process should only be used to fund code enforcement. The funds should not be placed in the General Fund. If they are, it gives validity to the assertion that the ACE process is only to raise revenue for the City and is a "cash cow".

Conclusion

In conclusion what is needed to improve the enforcement program is more inspectors and an efficient collection system, as well as revising the LAMC to make all minor offenses either an infraction or at the discretion of the City Attorney, either a misdemeanor or infraction. It would be prudent to make these improvements first. Only if these measures do not make the current enforcement procedures efficient, should the City Council implement the ACE program.

Overlaying the existing enforcement programs with another enforcement program will lead to confusion and it will not be productive, particularly the way the proposed ACE

ordinance is written.

However, if the City Council desires to implement the proposed ACE ordinance, then the ordinance should be amended as recommended above.

March 27, 2011



JACK ALLEN³⁰

15015 Bestor Boulevard,
Pacific Palisades, California 90272
(310) 454-2712
E-Mail uclajack@verizon.net

³⁰ The author is the former City Attorney of Beverly Hills and prior to that , the City Prosecutor in the City of Torrance for four years. He has been a community activist in the City of Los Angeles for over 40 years.